

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 WACO DIVISION

4 UNITED STATES OF AMERICA *

*

5 *

6 VS.

* CRIMINAL ACTION NO. W-11-CR-182

*

7 NASER JASON ABDO

* May 21, 2012

8 BEFORE THE HONORABLE WALTER S. SMITH, JR., JUDGE PRESIDING

PRETRIAL HEARING

VOLUME 1

9 APPEARANCES:

10 For the Government:

Mark Frazier, Esq.

11 Gregg N. Sofer, Esq.

Lawrence Schneider, Esq.

12 Assistant United States Attorneys

PO Box 828

13 Waco, Texas 76701

14 For the Defendant:

Zachary L. Boyd, Esq.

PO Box 870

15 Copperas Cove, Texas 76522

- and -

16 Michael F. White, Esq.

1103 N. Gray

17 Killeen, Texas 76541

18 Court Reporter:

Kristie M. Davis

United States District Court

19 PO Box 20994

20 Waco, Texas 76702-0994

21
22 Proceedings recorded by mechanical stenography, transcript
23 produced by computer-aided transcription.
24
25

1 (May 21, 2012, 9:08, defendant present.)

2 MS. WILLIS: Pretrial hearing in Criminal Action
3 No. W-11-CR-182 styled United States of America vs. Naser Jason
4 Abdo.

5 MR. FRAZIER: Mark Frazier, Gregg Sofer and Larry
6 Schneider for the United States, Your Honor.

7 MR. BOYD: Zachary Boyd and Michael White for Mr. Abdo,
8 Your Honor.

9 THE COURT: Good morning, Counsel.

10 MR. BOYD: Good morning.

11 THE COURT: We have three motions for limine up here. And
12 what's the government -- does the government object to any of
13 them, Mr. Frazier?

14 MR. FRAZIER: Yes, Your Honor. We at least have arguments
15 to present to the Court very briefly.

16 THE COURT: All right. Let's start with the one involving
17 the charges of -- the charge of both child pornography and
18 being AWOL. Are those -- what they are?

19 MR. FRAZIER: We don't intend to go into that. As far as
20 him being previously charged with child pornography or AWOL,
21 we'll make reference to it during the trial as either other
22 matters or other charges or something like that, but we don't
23 have any desire to go into those, that matter of mentioning it
24 specifically.

25 THE COURT: That motion in limine will be granted then.

1 The next one would be involving the use of the word
2 "terrorism," "terrorist" or words derivative of that.

3 MR. FRAZIER: Judge, we're not going to emphasize that.
4 There's some instances where I just don't know how we can avoid
5 it if the witness was part of the Joint Terrorism Task Force
6 or, you know, there's witnesses who are going to testify that a
7 terrorism alert would have arisen at Fort Hood had this bomb
8 actually gone off. I mean, to that extent I think we have to
9 mention --

10 THE COURT: I think you can do it without using the word
11 "terrorism." You can say that an alert would have gone off and
12 that kind of thing.

13 MR. FRAZIER: Okay. Yes, sir.

14 MR. BOYD: Thank you, Your Honor.

15 THE COURT: That will be granted to that extent then.
16 Last one?

17 MR. FRAZIER: Well, I have two. There's a --

18 THE COURT: Wait. Let's -- I was taking care of the
19 defendant's first. I didn't know you had anything.

20 MR. FRAZIER: Oh, no. These are defendant's. There is
21 only one more. Well, the -- I thought there was an objection.
22 There was a motion in limine regarding expert testimony.

23 THE COURT: That's the one I'm looking at.

24 MR. FRAZIER: Okay. Your Honor, our position on the
25 fact -- our position on the -- that particular motion is that

1 the expert in this case is not only going to testify that the
2 components of the destructive device were present but --

3 THE COURT: That's part of your --

4 MR. FRAZIER: It's part of our case.

5 THE COURT: Part of your case. One of your elements.

6 MR. FRAZIER: More than one of the counts and that's my
7 point is that we really -- really there's no way to prohibit
8 this type of testimony and there is a -- there was a recreation
9 a substantially similar device of one way it could have been
10 created based on the instructions and the materials the
11 defendant had and we intend to use that as an exhibit in
12 addition to his testimony to -- as part of the evidence to
13 those counts.

14 THE COURT: Mr. Boyd, I don't think that can be avoided.
15 I mean, that's an element of the government's necessary proof
16 it seems to me.

17 MR. BOYD: Your Honor, with respect to their ability to
18 prove their case, yes. With respect to them speculating as to
19 a device, my expert who I had and who I'm unable to use would
20 have testified directly opposite to what this -- what the
21 prosecution is saying and specifically they didn't build the
22 device based off of the article. They didn't build the device
23 based off of the knowledge that Mr. Abdo would have had
24 available to him. They built the device based off expertise.
25 They used a completely different triggering mechanism. They

1 never assembled a device that would be a fair representation
2 because anything they would show the jury would be harmful in
3 that it is complete and total speculation. They can't really
4 even establish that it would have gone off that way, Your
5 Honor, because my expert would opine if I had him available
6 that it probably would not have gone off.

7 THE COURT: I hear you and it sounds like you're well
8 prepared for cross-examination of the government's expert.
9 That will be overruled. Anything else?

10 MR. FRAZIER: The last one that I had to do has to do with
11 events occurring outside the Western District of Texas. I
12 believe there's a motion in limine asking us not to go into
13 matters that occurred in Kentucky and in Tennessee in early
14 July of 2011. That specifically is mentioned in the indictment
15 in Count Two. We've started in or about July 2011 in the
16 Western District of Texas and elsewhere. These acts are acts
17 that are a part of the intent, the preparation of the
18 defendant.

19 THE COURT: I don't even have that motion.

20 MR. FRAZIER: Okay.

21 MR. BOYD: Your Honor, that should have been the -- it was
22 filed. It should have been one of the ones that said motion in
23 limine in regards to other alleged bad acts and events
24 occurring outside.

25 THE COURT: Okay. Since it was just filed within the last

1 hour, I haven't had any chance to read it very carefully.

2 Go ahead, Mr. Frazier.

3 MR. FRAZIER: Basically, Judge, part of our evidence that
4 we're going to start with this afternoon involves an incident
5 that occurred -- or incidents that occurred in Kentucky on July
6 3rd and 4th of 2011 that the defendant later acknowledged in a
7 statement was part of a plan to kidnap and kill a U.S. soldier.
8 That's all -- that's part of Count Two because we've included
9 it in our indictment. Count Two of the indictment goes back to
10 July -- July of 2011 up to and including July 27th in the
11 Western District and elsewhere and that was specifically
12 included that way because it is part of the defendant's
13 preparation, part of the plan, his intent. It all goes to show
14 what his intent was regarding his plot to kill U.S. soldiers.
15 And the plot may have started earlier than July, but our
16 evidence is going to show that at least as of July 3rd and 4th
17 when -- and on July 4th when the defendant disposed of evidence
18 in a Dumpster in Oak Grove, Kentucky that it relates to Count
19 Two of the indictment, and the only reason that our evidence
20 would show that he did not complete that act was because he was
21 interrupted by the fact that he was called back to post and
22 basically he made a U-turn and went AWOL. And so our --

23 THE COURT: We're not going to use the term "AWOL,"
24 correct?

25 MR. FRAZIER: Well, Judge, and I may have misspoke on

1 that. We'll approach the bench if we could before doing that,
2 but AWOL is what he did and so that sort of is part of the
3 evidence in this particular case. At the time we put on the
4 witness we may approach the bench because that is going to be
5 part of the evidence regarding why the defendant went missing,
6 but other than that it won't be mentioned again.

7 THE COURT: That's what a motion in limine is all about.

8 MR. FRAZIER: Okay.

9 THE COURT: Response?

10 MR. BOYD: Your Honor, my concern is the government
11 intends to offer intent evidence and motive elements evidence
12 and I have attempted to subpoena Katherine Sematrano,
13 Lieutenant Colonel Jeff Lavarneck and Reginald Sampson to deal
14 with the intent issue and to deal with the motive issue. And I
15 was unable to get those witnesses subpoenaed by the U.S.
16 Marshals and they are key to my defense in terms of motive.

17 THE COURT: Those witnesses you wanted were going to deal
18 with totally irrelevant matters in my opinion. That's why that
19 was denied.

20 Are you calling a witness from Tennessee?

21 MR. FRAZIER: Yes, sir.

22 THE COURT: Okay. Well, you mentioned something about
23 what you intended to put on this afternoon. I'll be pleased if
24 we're able to get a jury selected by this afternoon, and let me
25 explain to you the way I intend to do that.

1 MR. FRAZIER: Yes, sir.

2 THE COURT: I have not seen as much publicity about a case
3 since the Branch Davidian case, including I understand
4 reporting over the weekend that -- not only about the case but
5 about the defendant's confessing to it.

6 Anyway, my intention is to qualify the jury on all of the
7 aspects we usually go into without ever mentioning this
8 specific case and then mentioning the case enough that they can
9 know what it's about, asking them how many of them have heard
10 anything about it, identifying all of them, sending them back
11 to the jury room and bringing them in one at a time to ask them
12 what they've heard otherwise. When they explain what they've
13 heard, everybody will hear what they've heard. I don't know if
14 we can possibly get a jury of people who haven't heard anything
15 about this case or not. We may have 12 deaf mutes on the jury
16 who can't read, but we'll do our best.

17 MR. FRAZIER: Yes, sir. That's all we have, Your Honor.

18 THE COURT: Mr. Boyd?

19 MR. BOYD: Your Honor, I had one motion a verbal motion
20 that I feel compelled to bring at this time.

21 Your Honor, I've done a lot of thinking since our last
22 court hearing and I understand the Court's intent and I respect
23 the Court's intent. At school I was taught to stand up for the
24 harder ride over the easy or wrong and I'm at one of those
25 moments right now where I've got to make the Court aware of my

1 feelings. With respect to my client sitting here wearing a
2 mask, I think it denies him due process. I don't think that's
3 the Court's intent, but I think that that's the effect. I
4 think that if we tell the jury anything other than you can't
5 hold it against him in terms of guilt/innocence, then we do a
6 disservice to the process. I understand the concern about if
7 that's all we say it can't possibly undo the appearance of a
8 man sitting behind counsel table with a mask on and that it
9 looks like it denies due process and I get that dilemma. I get
10 that what the Court is trying to balance. I understand that.
11 But, you know, it is -- it is possible for this Court to in
12 effect impart instruction and give commands in such a way that
13 we can get through this in a manner such that Mr. Abdo will
14 behave during trial. And he has no -- he has no reason to
15 misbehave because we're added. We're knocking on that door and
16 if he does, he hurts his own case and no one else does. He has
17 assured me that he is going to behave in this courtroom and I
18 am the man sitting next to him and I ask this Court to remove
19 the mask and if he acts out then we ramp it up at that point.
20 I think due process demands it and I leave it to the Court's
21 discretion.

22 THE COURT: Well, we have to remember the fact that all of
23 this was brought about by Mr. Abdo's actions, not by anybody
24 else's. So I'm not going to grant that at this point in time.

25 MR. BOYD: Yes, Your Honor.

1 THE COURT: Anything further?

2 MR. BOYD: No, Your Honor.

3 MR. FRAZIER: No, sir.

4 THE COURT: Let's get our jury in and give it a try then.

5 LAW CLERK: All rise.

6 Court will stand in recess.

7 (A break was taken from 9:20 to 9:30.)

8 LAW CLERK: All rise.

9 THE COURT: Be seated, everyone.

10 MS. WILLIS: Jury selection and trial proceedings in
11 Criminal Action No. W-11-CR-182 styled United States of America
12 vs. Naser Jason Abdo.

13 MR. FRAZIER: Mark Frazier, Gregg Sofer and Larry
14 Schneider for the United States, Your Honor.

15 MR. BOYD: Your Honor, Zachary Boyd and Mr. Michael White
16 for Mr. Abdo.

17 (Voir dire proceedings took place.)

18 THE COURT: Members of the jury, would you stand and raise
19 your right hand, please, so the clerk can administer the
20 juror's oath?

21 (The jury was sworn.)

22 THE COURT: Be seated, ladies and gentlemen.

23 Ladies and gentlemen of the jury, when you take that oath
24 you become officers of this Court just as I am and just as the
25 attorneys are. As such there are certain rules that you have

1 to follow in doing your job just as there are certain rules
2 that we have to follow in doing ours. So I want to read you
3 some brief instructions now concerning your service on this
4 case as jurors.

5 Ladies and gentlemen, you and you alone as jurors are now
6 the judges of the facts. By your verdicts you will decide the
7 disputed issues of fact. I will decide all questions of law
8 that arise during the trial, and before you retire to
9 deliberate at the close of the case I will instruct you on the
10 rules of law that you must follow and apply in deciding upon
11 your verdict.

12 Nothing that I may say or do during the course of the
13 trial is intended to indicate nor should be taken by you as
14 indicating what your verdicts should be. Your verdicts should
15 be based on your independent assessments of the facts in this
16 case as applied to the law on which I instruct you at the
17 conclusion of the evidence.

18 The evidence from which you will find the facts will
19 consist of the testimony of witnesses, documents, other
20 tangible things received into the record as exhibits and any
21 facts the lawyers agree or stipulate to or that I instruct you
22 to find.

23 Certain things are not evidence and mustn't be considered
24 as such. First, statements, arguments and unanswered questions
25 by the lawyers are not evidence. Second, objections to

1 questions are not evidence. The lawyers have an obligation to
2 their client to make an objection whenever they believe
3 evidence is being offered improperly. You should not be
4 influenced by the objections or by my rulings on them. If the
5 objection is sustained, ignore the question. If it is
6 overruled, treat the question and answer like any other. If
7 you're instructed that some item of evidence is received for a
8 limited purpose only, you must follow that instruction.
9 Testimony that I exclude or tell you to disregard is not
10 evidence and mustn't be considered as such. And lastly
11 certainly anything you may see or hear outside the courtroom is
12 not evidence and must be disregarded. You are to decide the
13 case solely on the evidence presented here in the courtroom.

14 Remember there are two kinds of evidence: Direct evidence
15 and circumstantial evidence. Direct evidence is simply direct
16 proof of a fact such as testimony of an eyewitness.
17 Circumstantial evidence is proof of facts from which you may
18 infer or conclude that other facts exist. I will give you
19 further instructions on these as well as other matters at the
20 end of the case, but bear in mind that you may consider both
21 kinds of evidence and that each has the same weight in a court
22 of law.

23 It is strictly up to you to decide which witnesses to
24 believe, which witness not to believe and how much of any
25 witness' testimony to accept or reject. I will also give you

1 some guidelines for determining the credibility of witnesses at
2 the end of the case.

3 You should give careful attention to the testimony and
4 evidence presented for your consideration during the trial, but
5 you should not form or express any opinion about the case one
6 way or the other until you have heard all the evidence and have
7 had the benefit of the closing arguments of the lawyers and my
8 instructions on the applicable law.

9 Although the exhibits which are admitted into evidence
10 will be available to you for your inspection and review during
11 your deliberations, under normal circumstances no written
12 transcript of the testimony of witnesses can be made available
13 to you while you're deliberating, nor under normal
14 circumstances can all or any significant portion of a witness'
15 testimony be read to you while you're deliberating. For those
16 reasons it is very important that you pay close attention to
17 the testimony given by each witness during the trial.

18 During the trial you shouldn't discuss the case among
19 yourselves or with anyone else and you must not permit anyone
20 to attempt to discuss it with you or in your presence. And
21 insofar as the lawyers are concerned as well as others whom you
22 may come to recognize as having some connection with the case,
23 you're instructed that in order to avoid even the appearance of
24 impropriety you should have no conversation whatever with those
25 persons while you're serving on the jury except for casual

1 greetings.

2 If you would like to take notes during the trial, you may
3 do so. You're not required to take notes if you prefer not to.
4 Steno pads and pencils have been provided for your use if you
5 do choose to take notes. If you do that, be careful not to get
6 so involved in notetaking that you become distracted from the
7 ongoing proceedings. Your notes should be used only as memory
8 aids. You should not give your notes precedence over your
9 independent recollection of the evidence. And if you do not
10 take notes, you should rely upon your own independent
11 recollection of the proceedings and you should not be unduly
12 influenced by the notes of other jurors.

13 You'll notice that we do have an official court reporter
14 making a record of the trial, but we will not have typewritten
15 transcripts of this record available for your use in reaching a
16 decision in this case.

17 You should avoid reading any newspaper articles that might
18 be published about the case now that the trial is in progress
19 and you should avoid listening to or observing any broadcast
20 news programs on either television or radio that concerns the
21 case. The reasons for these cautions of course lies in the
22 fact that it will be your duty to decide this case solely on
23 the basis of the testimony and evidence presented during the
24 trial without consideration of any other matters whatsoever.

25 From time to time during the trial I may be called upon to

1 make rulings of law on motions or objections made by the
2 lawyers. You should not infer or conclude from any ruling I
3 may make that I have any opinions on the merits of the case
4 favoring one side or the other, and if I sustain an objection
5 to a question that goes unanswered, you should not speculate on
6 what the answer might have been nor should you draw any
7 inferences or conclusions from the question itself.

8 During the trial it may be necessary for me to confer with
9 the lawyers from time to time concerning questions of law or
10 procedure that require consideration by me alone. On some
11 occasions you may even be excused from the courtroom as a
12 convenience to you and to us while we discuss such matters. We
13 will try to limit such interruptions as much as possible, but
14 you should remember at all times the importance of the matters
15 you're here to determine and should be patient even though the
16 case may seem to you to be going slowly.

17 The trial is now about to begin. The lawyers for each
18 side will be given an opportunity to make opening statements in
19 which they may explain the issues in the case and summarize the
20 facts they expect the evidence will show. First, the
21 government will make an opening statement, which again is
22 simply an outline to help you understand the evidence the
23 government's attorneys expect to present. Next, the
24 defendant's attorneys may elect to make an opening statement.
25 They may elect to wait until the government has rested.

1 Sometimes that's waived entirely. The government will then
2 present its witnesses and the attorneys for the defendant will
3 have the right to cross-examine them. Following the
4 government's evidence the defendant may, if he elects, present
5 witnesses and the government would have the opportunity to
6 cross-examine them. After that the government could decide to
7 present rebuttal witnesses. After all the testimony and
8 evidence has been presented, the lawyers will then be given a
9 last opportunity to address you and make their summations or
10 final arguments. Remember that the statements the lawyers make
11 in opening as well as the arguments they present at the end of
12 the trial are not to be considered by you either as evidence in
13 the case, which comes only from the witnesses and exhibits, or
14 as your instructions on the law which will come only from me.
15 Nevertheless, these statements and arguments are intended to
16 help you understand the issues and the evidence as it comes in
17 as well as the positions taken by both sides.

18 Counsel, would I assume correctly that the rule will be
19 invoked in this case?

20 MR. BOYD: Yes, Your Honor.

21 THE COURT: That simply means that the witnesses will have
22 to remain outside the courtroom while they're awaiting their
23 turn to testify and they're not to talk with anyone concerning
24 what their testimony has been or will be except for the
25 attorneys who are exempt from that rule and of course the

1 government's case agents will be exempt, also.

2 Ladies and gentlemen, it's almost ten minutes till 5:00.
3 We don't have time for opening statements this afternoon. So
4 we're going to take off at this point and resume at 9:00
5 o'clock in the morning. Please remember the instructions I
6 just gave you not to -- to try your best to insulate yourself
7 from any news reports. I know it's a temptation to want to see
8 what's reported on television and reported in radio and in the
9 newspaper in a case in which you're involved. We ask you
10 please to not do that because we want you to make a decision
11 based strictly on what's here in the courtroom and not what's
12 presented in the media.

13 If you will be here shortly before 9:00 o'clock. If
14 you'll go now this way, the Marshal will show you where the
15 jury room is where you should report in the morning and we'll
16 be ready to proceed promptly at 9:00 a.m. Have a pleasant
17 evening. Drive safely going home.

18 LAW CLERK: All rise.

19 (Jury exited the courtroom at 4:50.)

20 LAW CLERK: Court will stand in recess till 9:00 o'clock
21 tomorrow morning.

22 (A break was taken from 4:50 to 4:51.)

23 LAW CLERK: All rise.

24 MR. FRAZIER: I'm sorry, Judge. I just wanted to clarify
25 about the length of time we have for opening statements. Could

1 we ask for 15 minutes?

2 THE COURT: Yes, sir.

3 MR. FRAZIER: Okay. The other thing is, Judge, I wanted
4 to clarify and I failed to do this this morning. We have a
5 procedure that we're going to use a photograph of the defendant
6 to show the witnesses to identify him with since he's wearing a
7 mask here in court to replace an in court identification. We
8 marked it as an exhibit. We're going to have a witness testify
9 to it that that is in fact the defendant so another witness can
10 come in and identify him. They'll use the photo to identify
11 the defendant as opposed to an in court identification. And I
12 wanted to make sure the Court was okay with that.

13 THE COURT: Any objection, Mr. Boyd?

14 MR. BOYD: Your Honor, looking at the photograph that
15 they're trying to use does not resemble my client nowadays.

16 MR. FRAZIER: Well, right. It's a photo made at the time
17 he was arrested. So that'd be a more accurate representation
18 then of the defendant.

19 MR. BOYD: I don't think it's an appropriate
20 identification.

21 MR. FRAZIER: I could have the witness to -- ask the
22 witness if he doesn't look the same here in court today. I
23 don't think that -- if Mr. Boyd would prefer that, that'd be
24 fine.

25 THE COURT: Would you prefer that, Mr. Boyd?

1 MR. BOYD: No, Your Honor.

2 THE COURT: Okay.

3 MR. FRAZIER: The final thing, Judge, is I want to clarify
4 the motion in limine ruling this morning. The fact that the
5 defendant went AWOL is a part of our case. The fact that the
6 warrant was issued I recognize is not. And so would it be
7 permissible for our witnesses to say because the defendant
8 himself in some of the evidence we're going to be presenting
9 says I went AWOL. Are we allowed to present that type of
10 evidence as opposed to -- and just leave out the fact that
11 there was a warrant issued for his arrest for absent without
12 leave unless we of course approach the bench first if it
13 becomes relevant somehow?

14 MR. BOYD: Your Honor, I think there's a concern in the
15 military system with whether or not the Article 32 hearing had
16 occurred and then contemporaneous with the subject to the
17 Article 32 hearing whether or not there was actually an
18 arraignment after that investigation.

19 THE COURT: I have no idea what you're talking about,
20 Mr. Boyd, or what relevance it has to anything.

21 MR. BOYD: Your Honor, it has direct relevance on whether
22 or not there was an outstanding fugitive from justice.

23 MR. FRAZIER: We're not going to allege that.

24 THE COURT: They're not suggesting that. They're
25 suggesting that he left the military without being on leave.

1 Isn't that what AWOL means?

2 MR. FRAZIER: Yes, sir.

3 MR. BOYD: Your Honor, it's a criminal charge.

4 THE COURT: It's a term also that is used in regular
5 parlance that the jury would understand without being lawyers
6 or military lawyers in particular. So I see no problem with
7 using that, Mr. Frazier.

8 MR. FRAZIER: Okay. And the final thing is there are two
9 statements the defendant makes that we intended to offer during
10 evidence where he uses the word "terrorist," but says he's not
11 a terrorist. We're going to go back and excise based on the
12 Court's ruling but we wanted to check with Mr. Boyd to verify
13 he wanted us to excise those portions of the statements the
14 defendant had made in recorded phone calls that were sort of
15 exculpatory statements that we had included, but I wanted to
16 verify that before we go back tonight and take those statements
17 out.

18 MR. BOYD: Your Honor, I don't know specifically what
19 statements he's talking about.

20 MR. FRAZIER: They're in the jail phone calls between his
21 mother and the defendant where his mother makes reference to
22 the fact that she doesn't like that word. Defendant says
23 "terrorist" and he responds later, I'm not a terrorist, Mom.
24 And the second was in another recorded phone call at the jail
25 where he denies being a terrorist to -- I think it was to his

1 mother in the second phone call. But we're prepared to take
2 those out but I wanted to make sure that it wasn't going to run
3 afoul of something Mr. Boyd wanted based on the ruling -- the
4 motion he had this morning.

5 MR. BOYD: Your Honor, I just -- I don't think that's
6 relevant at all and I don't want the word "terrorist."

7 MR. FRAZIER: We'll be happy to excise and take it out.
8 That's all we have.

9 THE COURT: I have one last thing.

10 MR. FRAZIER: Yes, sir.

11 THE COURT: Now that the jury's been selected, this is
12 just a simple trial involving bombs and attempted bomb making
13 and all of that. I don't know how many witnesses you have, but
14 I bet you don't need half of them, Mr. Frazier.

15 MR. FRAZIER: We're not going to call most of those,
16 Judge. Most of those are on there just in case somebody got
17 sick or ill or something like that. But we're not calling 43
18 witnesses for the trial.

19 THE COURT: Right.

20 MR. FRAZIER: Yes, sir.

21 THE COURT: Okay. We'll stand in recess till 9:00 o'clock
22 in the morning.

23 (Hearing adjourned at 4:57.)
24
25

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 WACO DIVISION

4 UNITED STATES OF AMERICA *

*

5 *

6 VS.

* CRIMINAL ACTION NO. W-11-CR-182

*

7 NASER JASON ABDO

* May 22, 2012

8 BEFORE THE HONORABLE WALTER S. SMITH, JR., JUDGE PRESIDING

9 JURY TRIAL PROCEEDINGS

VOLUME 2

10 APPEARANCES:

11 For the Government:

Mark Frazier, Esq.

Gregg N. Sofer, Esq.

Lawrence Schneider, Esq.

12 Assistant United States Attorneys

13 PO Box 828

Waco, Texas 76701

14 For the Defendant:

Zachary L. Boyd, Esq.

15 PO Box 870

Copperas Cove, Texas 76522

16 - and -

Michael F. White, Esq.

17 1103 N. Gray

Killeen, Texas 76541

18 Court Reporter:

Kristie M. Davis

19 United States District Court

20 PO Box 20994

Waco, Texas 76702-0994

21
22 Proceedings recorded by mechanical stenography, transcript
23 produced by computer-aided transcription.
24
25

1 (May 22, 2012, 9:01, defendant present.)

2 LAW CLERK: All rise.

3 THE COURT: Be seated, everyone.

4 Do you have something you need to take up real quickly,
5 Counsel?

6 MR. BOYD: Yes, Your Honor. Very quickly. Your Honor,
7 I'm developing or am continuing to have concerns about the
8 restraints on Mr. Abdo. It is apparent to me as it was
9 reported on widely yesterday that the efforts that the Marshals
10 are making are simply not of such a nature that they are
11 passive and they are impacting the trial such that I don't
12 believe my trial can -- my client can, you know, get a fair
13 trial. If the jury sees the Marshals with all these protective
14 devices -- I mean, the eyeglasses, I understand why they want
15 them. I respect why they want them. I also understand there's
16 a mask on my client's face so that it'd be pretty prohibitive
17 for him to get anything into their eyes. So while the jury is
18 present I would ask that there be no eyeglasses unless they are
19 prescription eyeglasses available or in the courtroom or used
20 by the Marshals.

21 Furthermore, you know, as I'm sitting here right now my
22 client is being held forward in his chair with the Marshals'
23 foot pushed up against it that is visible to anybody sitting in
24 the gallery. I can't have that and have a fair trial, Your
25 Honor.

1 THE COURT: All right. I have no control over that.
2 Let's bring the jury in and begin the trial. Actually I'll
3 talk to the chief Marshal about the glasses. I agree that's
4 ridiculous.

5 THE BAILIFF: All rise.

6 (The jury entered the courtroom at 9:03.)

7 THE COURT: Be seated, everyone.

8 Good morning, ladies and gentlemen. We're ready for
9 opening statements. The government has the opportunity to
10 either do that first and each side's been allotted 15 minutes.

11 Counsel?

12 OPENING STATEMENT ON BEHALF OF THE GOVERNMENT

13 MR. SOFER: May it please the Court, ladies and gentlemen
14 of the jury, defense counsel.

15 On July 27th, 2011 at approximately 1:00 o'clock in the
16 afternoon Naser Jason Abdo, the defendant in this case, was at
17 the end of a long road which for him was a mission to kill
18 United States soldiers. The evidence in this case will show
19 the defendant who was an active duty member of the United
20 States Army stationed at Fort Campbell, Kentucky had been
21 staying at the America's Best Value Inn in Killeen, Texas here
22 in the Western District of New York (sic) Waco Division. He
23 was there since the early morning hours of July 26th less than
24 two days.

25 There in his room and rooms, you'll hear, he was actively

1 working on accomplishing his mission. He was building a bomb.
2 And he was not -- and he was at most, ladies and gentlemen,
3 only hours away from finishing its construction.

4 The evidence will prove that the defendant's plan actually
5 began well before July 27th. In early July of 2011 the
6 defendant attempted to purchase a weapon, a pistol, in
7 Tennessee near the Fort Campbell Army base where he was
8 stationed. You'll learn that on July 3rd, 2011 the defendant
9 walked into Quantico Tactical, a gun store in nearby Tennessee,
10 and asked which pistols had the most knockdown power.

11 You'll learn that he wore his sunglasses the whole time he
12 was in the store, something that he did repeatedly throughout
13 his attempt to commit murder. And his behavior in that shop,
14 importantly, caused store employees enough concern that they
15 notified the authorities.

16 When the defendant's superiors in the Army learned of his
17 attempt to purchase a pistol, they tried to bring him back onto
18 the base. It was July 4th of 2011.

19 When the defendant realized he was being summoned back to
20 his base, he fled. He fled Fort Campbell. The evidence will
21 prove, and it's a recurring theme throughout this case, that
22 the actions of concerned citizens prevented disaster. By
23 notifying the defendant's superiors and causing them to summon
24 him back to the base, the defendant's first attempt to murder a
25 U.S. soldier were interrupted.

1 You'll learn that the gun that he tried to buy was only
2 one of several items that he wanted and needed to kill. As it
3 turns out, ladies and gentlemen, he had already acquired a body
4 bag, a stun gun, a cattle prod, garbage bags, a shovel,
5 handcuffs, clothing to hide his appearance and bleach to clean
6 up with. When he fled Fort Campbell, he dumped all of those
7 items and you're going to see them here in the courtroom. All
8 as a result again of a concerned citizen's telephone call.

9 You're going to learn that on July 4th, 2011 after
10 deciding to flee from Fort Campbell he threw most of these
11 items out in a Dumpster behind a truck stop in Oak Grove,
12 Kentucky and then he abandoned his car on a street outside of
13 Waffle House right across the street from where the Dumpster
14 was. In his abandoned car he left all the important documents
15 that one would collect during their life. He left his social
16 security number card. He left his birth certificate. He left
17 his school and military records among other records. He also
18 left behind his Army hat with the name Abdo on the back. He
19 left his car keys in the car. He took his backpack and he took
20 off never to return.

21 But even though he fled Fort Campbell, he continued on his
22 mission. He still wanted a gun and on July 7th, 2011 he
23 succeeded in buying one that was advertised on the internet.
24 The evidence will show that before leaving the defendant stole
25 his roommate's identification and he used that stolen

1 identification under the name Asher Pluto who was his roommate
2 to purchase a gun from a man named Abraham Wherry outside a UPS
3 store in Nashville, Tennessee where he had traveled. The gun
4 was a Springfield 40-caliber pistol.

5 The evidence will prove that the defendant actually left
6 Tennessee eventually and headed to Texas. You'll learn that
7 during his travels he tried his best to hide his identity and
8 prevent any authorities from tracking him.

9 Having been interrupted back in Kentucky, the defendant
10 was executing the same mission but he had a different plan.
11 The evidence will show that he had already acquired an article
12 which explained how to build a bomb, and like before he now
13 went about methodically acquiring all the tools and components
14 that you would need to build one. You will actually see the
15 defendant on surveillance video as he stopped to purchase most
16 of these items and materials, all the things that he would need
17 to build a working explosive device sometimes called an
18 improvised explosive device or IED.

19 The evidence will prove that on the evening of July 25th
20 and into the early morning hours of July 26th, 2011 he stopped
21 at a Walmart store in Plano, Texas and he purchased many of
22 these items to include two pressure cookers, a drill, batteries
23 and clocks. He also bought 100 rounds of ammunition for the
24 gun that he had bought. The video will show that he's dressed
25 in tan nursing scrubs, another -- and with a lanyard, another

1 attempt to hide his identity.

2 From Plano he traveled south by cab to Killeen, Texas
3 where he arrived at the America's Best Value Inn at about 3:30
4 in the morning on July 26th, 2011. He checked into the hotel
5 using the ID that he had previously stolen from his roommate
6 Asher Pluto and began unloading the items that he had purchased
7 to build the bomb. But he still needed a few more items to
8 complete the shopping list that he had made to build the bomb
9 and you'll see that shopping list.

10 Among other things he needed explosive powder. The
11 evidence will show that in the early afternoon of July 26, 2011
12 the defendant went to the Guns Galore store in Killeen, Texas.
13 There he bought six pounds of smokeless powder and another
14 magazine for his pistol. He already had three magazines. He
15 also purchased shotgun ammunition which the evidence will show
16 he wanted to use the little pellets inside as shrapnel in the
17 bomb.

18 You'll learn that again he wore his sunglasses inside the
19 store and again his behavior inside the store like his behavior
20 in the gun store in Tennessee attracted the attention of the
21 Guns Galore employees. The questions that he asked, his
22 behavior and demeanor is captured on the store video
23 surveillance which you'll see. It caused them to call the
24 police. And importantly, ladies and gentlemen, the evidence in
25 this case will establish that but for that telephone call the

1 defendant's attempt to kill a United States soldier or soldiers
2 would not have been interrupted.

3 After Guns Galore the evidence will show that the
4 defendant went to an Army Surplus store in Killeen called
5 Surplus City. There he bought an Army combat uniform, a name
6 patch with the name Smith on it and a First Cavalry patch which
7 he believed would be consistent with some of the units at Fort
8 Hood. Again he wore his sunglasses. Again his actions caused
9 store employees concern. You'll hear from those store
10 employees particularly when he didn't even know what unit he
11 was assigned to at Fort Hood.

12 The evidence will show that he put the Army uniform with
13 the name Smith name tag on it on right there in the store and
14 then he left. And you're going to learn that he purchased that
15 uniform so he'd fit in better in Fort Hood because it's
16 populated by so many soldiers.

17 From Surplus City the evidence will show the defendant
18 went to Lowe's where he bought additional items needed for
19 building the bomb. He bought, among other things, glue, tape,
20 outdoor lights on a string like Christmas lights and two
21 cardboard boxes. Again he wore his sunglasses. Again
22 surveillance captured him shopping. You'll hear from expert
23 witnesses what those components are used for in order to build
24 an IED or improvised explosive device.

25 Meanwhile, and thankfully, by the late afternoon of the

1 26th of July the Killeen Police Department was investigating
2 the report that they had received from the Guns Galore gun
3 store. KPD Sergeant Eric Bradley and others were trying to
4 identify the person who had purchased six pounds of an
5 explosive material in the gun store. Sergeant Bradley was able
6 to identify the taxi cab that had dropped the defendant off at
7 the gun store and he was able to learn that the taxi had picked
8 the defendant up from the America's Best Value hotel and that
9 night he went to the hotel, but you'll hear he was unable to
10 locate or identify the defendant at that time.

11 The evidence will show that on the morning of July 27th,
12 2011 Sergeant Bradley continued his investigation and he
13 learned about the defendant's trip to the Surplus City store
14 and the suspicious purchase of the uniform. And you're going
15 to learn that in combination with the information he already
16 knew, this caused him great concern and he and others went back
17 to the America's Best Value hotel to search for the man that
18 turned out to be the defendant. They still didn't have his
19 name. They still didn't have his ID but they had still
20 photographs which you will see from the Surplus City video
21 surveillance system.

22 At about 1:00 o'clock on the 27th Sergeant Bradley who was
23 standing in the lobby of the hotel saw the defendant walking
24 through the lobby. He matched the description of the pictures
25 that he had. The defendant was wearing a black backpack, and

1 given everything that Sergeant Bradley had learned, he feared
2 there could be an explosive device in the backpack. The
3 defendant was stopped and he was detained and his plans were
4 once again, ladies and gentlemen, interrupted, disrupted. His
5 mission incomplete this time by good police work.

6 In the defendant's backpack you'll hear that authorities
7 recovered two clocks, his loaded 40-caliber pistol, the article
8 with the instructions on how to build a bomb, a shopping list
9 of some of the items needed to build a bomb and other documents
10 and items that linked him to the crimes charged in this case.

11 The evidence will show the defendant was not just sitting
12 idly by in his room during his short stay. He wasn't sitting
13 there watching TV. A search of his hotel room revealed that he
14 had acquired all of the necessary components to build a bomb
15 and that he had begun the process of building a device. You
16 will hear from expert witnesses who will explain the defendant
17 was at most hours away from the assembly of a working
18 improvised explosive device.

19 Finally, ladies and gentlemen, you will hear the
20 defendant's own description of his intentions and motivations
21 for these crimes. You will learn that the defendant planned to
22 hide the bomb in a box and place it in a Chinese restaurant
23 frequented by soldiers. He intended that bomb would explode in
24 the restaurant and kill occupants, soldiers eating inside. The
25 defendant planned to wait outside that restaurant and there he

1 would shoot with the gun and ammunition he had bought surviving
2 soldiers.

3 In short, this man intended to commit mass murder in
4 Killeen, Texas. That, in summary, ladies and gentlemen, is
5 what the evidence in this case will prove. At the conclusion
6 of the evidence we will return again and speak with you and ask
7 you to return a verdict based on the evidence and only upon
8 that evidence a verdict of guilty. Thank you very much.

9 THE COURT: Mr. Boyd, did you wish to make an opening
10 statement at this point?

11 MR. BOYD: Yes, Your Honor.

12 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

13 MR. BOYD: May it please the Court, ladies and gentlemen
14 of the jury, prosecutors.

15 An analogy. Attempting suicide by a knife, a decision
16 gets made, an item has to be purchased to accomplish suicide by
17 knife. And what's going to end up happening is just the
18 purchase of a knife is not going to end up being attempted
19 suicide. What the evidence is going to show is that things
20 were purchased. Lawful things were purchased. No attempt was
21 made.

22 Let's take it a little further with that. And I want the
23 jury to focus on not just the evidence. I am going to ask the
24 jury to focus on the evidence and the law because that's very
25 important in this case. It's important because you're probably

1 not going to like the evidence, but we have a system of laws.
2 The law, if you follow it, the government can't get there in
3 this case.

4 A destructive device means any explosive, incendiary or
5 poisonous gas bomb or any combination of parts either designed
6 or intended for use in converting any device into any
7 destructive device and -- and this is very important -- from
8 which a destructive device may readily be assembled. Readily
9 be assembled.

10 Count One requires that a person without lawful authority
11 attempt to use a weapon of mass destruction. There was no
12 device ever constructed. There was no device ever built. It
13 just wasn't there.

14 They're going to point to Mr. Abdo when he is caught
15 leaving the hotel motel America's Best Value Inn and they're
16 going to ask you to pass judgment based on that. There was no
17 bomb. There was no device. There was nothing built. Over and
18 over and over again no matter what the government says they're
19 not going to be able to get around that fact.

20 Count Two requires them to prove attempt to kill. Again,
21 there was no attempt made. It just didn't happen.

22 Count Three relies on the proof of attempt in the first
23 two counts.

24 Same with Count Four, same with the rest of the counts.
25 Government can't prove its case.

1 They in effect are going to be asking you, going back to
2 the analogy and I'll use the same analogy as suicide. If a
3 person decides to kill themselves and commits suicide by blowing
4 themselves up, if you're going to follow the government's logic
5 throughout this case, they're going to ask you to find that the
6 attempt happened with the first item purchased. That's not the
7 case. Common sense tells us otherwise because the attempt in
8 the first suicide example wouldn't happen until you took the
9 knife and put it on your skin and started to cut. That's what
10 attempted suicide is. And the attempt in the second suicide
11 example wouldn't have happened until a device got built and
12 something could have happened. Make the government prove the
13 case. Make the government prove the case beyond a reasonable
14 doubt and make the government prove the case to you not just
15 beyond a reasonable doubt based on the evidence as they told
16 you they would do. Make them do it based on the evidence and
17 the law and at the end of this jury I'm going to -- this jury
18 trial I'm going to stand up and I'm going to ask each one of
19 you to return a verdict of not guilty. Thank you very much.

20 THE COURT: Ready to call your first witness?

21 MR. SOFER: Yes, Your Honor. Government calls Charles
22 Michael Owens.

23 (The witness was sworn.)

24 DIRECT EXAMINATION

25 BY MR. SOFER:

1 Q. Good morning, Agent Owens.

2 A. Good morning, sir.

3 Q. Would you please tell the jury -- you go by the name
4 Mike?

5 A. Yes, sir.

6 Q. Would you please tell the jury how you are employed?

7 A. I'm a special agent with the FBI in Austin, Texas.

8 Q. And how long have you been with the FBI?

9 A. Almost two and a half years.

10 Q. Prior to joining the FBI what did you do?

11 A. I was in the Army for five years.

12 Q. And what were your duties in the Army?

13 A. I was a signal intelligence operator and Arabic
14 linguist.

15 Q. And when you say Arabic linguist, can you describe
16 your training and experience in that position?

17 A. Yes, sir. I spent 63 weeks at the Defense Language
18 Institute in Monterey, California. Graduated in 2006.

19 Q. Okay. And during the course of your time in the Army
20 did you have further testing and instruction in that area?

21 A. Yes, sir. There was a yearly -- an annual exam we
22 had to pass to stay current on our language. It was the
23 defense language proficiency test.

24 Q. Have you attended college?

25 A. Yes, sir.

1 Q. And can you tell the jury what degree you received,
2 if any?

3 A. Yes, sir. I received a bachelor of science in
4 criminal justice with a minor in psychology.

5 Q. What are your current assignments with the FBI?

6 A. I'm currently assigned to a task force that
7 investigates matters of national security.

8 Q. And what was your assignment in 2011?

9 A. I'm sorry?

10 Q. What was your assignment in July of 2011?

11 A. In July of 2011 I was assigned to the task force.

12 Q. Okay. Did there come a time when you were asked to
13 travel to Killeen, Texas as part of your duties in the FBI on
14 or about July 27th, 2011?

15 A. Yes, sir.

16 Q. And why was that?

17 A. We were advised that there was an incident in
18 Killeen, Texas and an individual was in custody who had
19 allegedly planned to attack soldiers in the Fort Hood area.

20 Q. Okay. Did you drive up from Austin?

21 A. Yes, sir.

22 Q. And did you travel to Killeen?

23 A. Yes, sir.

24 Q. Was that here in the Western District of Texas -- I
25 think I might have said New York -- in the Waco Division?

1 A. Yes, sir.

2 Q. There is no Waco in New York, right?

3 Did you know when you left what you were going to be doing
4 when you arrived in Killeen?

5 A. Not initially. No. But however later on -- later --
6 early in the evening about 6:00 o'clock I was informed by my
7 supervisor that I would be interviewing the individual.

8 Q. Okay. And did you know where that interview was to
9 take place?

10 A. Yes, sir. The Killeen Police Department.

11 Q. Did you travel straight there?

12 A. Yes, sir.

13 Q. Did there come a time when you did interview that
14 individual?

15 A. Yes, sir.

16 Q. Do you recall approximately what time the interview
17 began?

18 A. 6:45 p.m.

19 Q. And you can -- can you describe for the members of
20 the jury where the interview took place?

21 A. Yes, sir. It occurred in an interview room at the
22 Killeen Police Department.

23 Q. Do you see the man who you interviewed here in the
24 courtroom today?

25 A. Yes, sir.

1 Q. Could you please point him out?

2 A. The defendant.

3 MR. SOFER: Indicating the defendant, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. SOFER:

6 Q. I want to show you what's been marked Government
7 Exhibit No. 153A and B. Do you recognize 153A? And I'm going
8 to show you 153B now as well.

9 A. Yes, sir.

10 Q. Do you recognize those two?

11 A. Yes, sir.

12 Q. What are they?

13 A. That's Naser Jason Abdo.

14 Q. Those are pictures, right?

15 A. Yes.

16 Q. The person depicted in those pictures is the same
17 person sitting here in the courtroom today?

18 A. Yes, sir.

19 MR. SOFER: Your Honor, at this time government moves 153A
20 and B into evidence.

21 MR. BOYD: Your Honor, I'm going to object on failure to
22 lay the proper predicate.

23 THE COURT: Objection overruled. They're admitted.

24 (Exhibit(s) admitted: G153A, G153B)

25 BY MR. SOFER:

1 Q. Did you bring the defendant to the interview room?

2 A. Yes, sir. Myself and a Killeen detective -- I
3 believe it was a Killeen detective went down to the holding
4 area on one of the lower levels of the jail and escorted
5 Mr. Abdo into the interview room.

6 Q. What, if anything, did you do when you brought him to
7 the interview room?

8 A. The first thing we did was remove the cuffs and
9 instructed him to have a seat. Then I -- you know, I asked him
10 if he was all right, if he needed anything to eat or drink, if
11 he needed a break.

12 Q. And what was his response?

13 A. He said he didn't need anything.

14 Q. Did you talk to him?

15 A. Yes, sir.

16 Q. For approximately how long did you talk to him that
17 day?

18 A. The first interview lasted a little over six hours.

19 Q. Does he speak English?

20 A. Yes.

21 Q. Did there come a time when you read the defendant his
22 Miranda rights, commonly -- the Miranda rights or his
23 constitutional warnings?

24 A. Yes, sir. Roughly ten minutes into the interview.

25 Q. And did you read them from a particular place?

1 A. Yes, sir. From the FD395 which is the FBI's advice
2 of rights form.

3 Q. Show you what's been marked Government Exhibit No. 1.
4 Can you see that?

5 A. Yes, sir.

6 Q. Can you tell the members of the jury what Government
7 Exhibit No. 1 is?

8 A. It's an FD395. It was the -- the FD395 that I
9 presented to him on the 27th.

10 Q. Okay. And is your signature located on that
11 document?

12 A. Yes, sir. I'm the first witness.

13 Q. And did the defendant sign it as well?

14 A. Yes, sir.

15 MR. SOFER: At this time the government moves Government
16 Exhibit No. 1 for identification into evidence.

17 MR. BOYD: No objection.

18 THE COURT: It's admitted.

19 (Exhibit(s) admitted: G1)

20 BY MR. SOFER:

21 Q. After advising the defendant of his rights, did he
22 indicate to you whether or not he understood them?

23 A. Yes, sir. He said he understood them.

24 Q. Did he agree to answer your questions?

25 A. Yes, sir.

1 Q. And did you proceed to ask him questions?

2 A. Yes, sir. I did.

3 Q. Were you -- were breaks taken during the course of
4 this fairly lengthy interview?

5 A. Yes, sir. We offered him breaks to go to the rest
6 room. We got him something to eat, offered him something to
7 drink and we gave him an opportunity to smoke in the brig.

8 Q. Did there come a time when you interviewed the
9 defendant again?

10 A. Yes. We conducted a secondary interview on July 28th
11 the following day.

12 Q. Okay. In the same location?

13 A. Yes, sir.

14 Q. Did you read him his rights once again?

15 A. Yes, sir.

16 Q. Did you read those from a particular place?

17 A. Yes, sir. I read them from the FD395 and had him
18 sign it again.

19 Q. Show you what's been marked Government Exhibit No. 2.
20 Do you see that document?

21 A. Yes, sir.

22 Q. Can you tell the members of the jury what it is?

23 A. It's the FD395 read to Mr. Abdo on the 28th.

24 Q. And is that your signature on there?

25 A. Yes, sir. Again I'm the first witness on this.

1 Q. And did he sign it as well?

2 A. Yes, sir.

3 MR. SOFER: Government moves Government Exhibit No. 2 for
4 identification into evidence, Your Honor.

5 MR. BOYD: No objection.

6 THE COURT: It's admitted.

7 (Exhibit(s) admitted: G2)

8 BY MR. SOFER:

9 Q. Did you proceed to interview the defendant on the
10 28th of July 2011?

11 A. Yes, sir.

12 Q. Approximately how long did that interview last?

13 A. Just over five hours.

14 Q. Again were breaks taken in that lengthy interview?

15 A. Yes, sir.

16 Q. Were there other agents or officers present during
17 either or both of the interviews?

18 A. Yes, sir. In both interviews it was myself and
19 Detective Sheldon Askew who is assigned to the task force, same
20 task force I am. And there were two Army Criminal
21 Investigative Division agents Albert Hazzard and Kevin Brooks.

22 Q. Okay.

23 A. They were -- we were either in the room with him or
24 if not in the observation room watching what was going on.

25 Q. Can you please describe for the jury the defendant's

1 attitude and demeanor throughout the two interviews that took
2 place?

3 A. Yes, sir. He appeared pretty calm. He seemed
4 willing to talk and seemed to answer the questions in a very
5 calculative manner. Several times when I asked a question he
6 would pause. Give me the feeling he was trying to decide the
7 best way to answer it. He appeared to want to be in control at
8 times of the interview as well.

9 Q. Did he ever indicate that he did not want to talk to
10 you anymore during the interview?

11 A. No, sir. There was an incident on the second day
12 when he got angry with one of the other investigators,
13 threatened to end the interview. His words were, either you
14 get out or the interview's over. The issue was resolved. That
15 particular investigator stepped out of the room and we
16 continued on with the investigation.

17 Q. Okay. Now, in substance the defendant talked to you
18 with what -- about what he was doing in his time in Fort
19 Campbell?

20 A. Yes, sir. We spoke about his past, where he was
21 from, said he was from Dallas, Texas, born and raised in the
22 Dallas area, said he enlisted into the Army in 2009 with the
23 military occupational specialty of infantry and after basic
24 training he was assigned to a company with the 101st Airborne
25 Division in Fort Campbell, Kentucky. We asked him about his

1 experiences in the Army. He made a couple of statements about
2 how he really had no friends. He mentioned having to put up
3 with some ridicule from other soldiers based on his religious
4 preference. He said he was a Muslim. And being a Muslim,
5 people -- he felt like people looked at him like he required
6 special treatment because he was supposed to pray five times a
7 day and he talked about how difficult it was to be a Muslim in
8 the American Army because he was not allowed to grow a beard.
9 It was hard for him to eat.

10 Q. Okay. You said he was assigned to Fort Campbell.

11 Can you tell -- have you been to Fort Campbell?

12 A. Yes, sir.

13 Q. Can you just tell the jury geographically where it
14 is?

15 A. Yes, sir. It's on the Kentucky side of the Kentucky
16 Tennessee border roughly 45 minutes or an hour north of
17 Nashville. A lot of soldiers I know who are assigned to Fort
18 Campbell actually live in Tennessee. So, I mean, it's right on
19 the state line.

20 Q. And you were saying that the defendant experienced
21 some trouble with fellow soldiers in the Army. And did there
22 come a time when he applied for something in particular that
23 changed his status?

24 A. Yes, sir. He -- he was enrolled in a posture
25 language course at the time and he made it known to his company

1 commander that even though he joined the Army and thought it
2 was the right thing to do at the time, he had had second
3 thoughts and he told his company commander that he wanted to
4 apply for conscientious objector status.

5 Q. Okay. And did that cause him further issues?

6 A. Yes, sir. When that news got out, his first sergeant
7 at the time threatened to have him removed from the language
8 course and sent to Afghanistan.

9 Q. This is what he told you, correct?

10 A. Yes, sir. That's what he told me.

11 Q. Can you tell us whether the defendant stated
12 something about what he did around 4th of July?

13 A. Yes, sir. On 4th of July the defendant left Fort
14 Campbell.

15 Q. Okay. And did he tell you some of the circumstances
16 before he had done that?

17 A. Prior to that day?

18 Q. Did he indicate that he tried to purchase anything?

19 A. Yes, sir. He -- on a couple of different occasions
20 he had attempted to purchase a firearm --

21 Q. Okay.

22 A. -- in the Fort Campbell area.

23 Q. And did he describe to you the circumstances in which
24 he tried to purchase a firearm?

25 A. Yes, sir. He was not able to.

1 Q. You said there were a couple instances?

2 A. Yes, sir.

3 Q. Can you describe them as he described them to you?

4 A. Yes, sir. He -- at one point he attempted to
5 purchase a firearm using the name Asher Pluto. When he went to
6 pick up the firearm, he provided his identification which was
7 Naser Abdo and it was -- caused a conflict at that point and he
8 explained that he commonly used the name Asher Pluto or a
9 different name on Craig's List.

10 Q. Did he indicate where he got the name Asher Pluto
11 from?

12 A. Yes, sir. At the time in Fort Campbell he was living
13 with an individual named Asher Pluto and he stated that this
14 person had two different identification cards and that he had
15 taken one.

16 Q. Did he indicate that he tried to purchase a weapon on
17 another occasion?

18 A. Yes, sir. He mentioned going into a gun store,
19 trying to purchase a weapon and they -- they wanted proof of
20 residence. So I believe it was a copy of his orders showing
21 that he was assigned to a unit at Fort Campbell, Kentucky. I
22 don't really recall why he was not able to purchase one that
23 day. I believe there was an argument that ensued between Mr.
24 Abdo and the employees. Mr. Abdo left and apparently left his
25 orders with the gun store and an employee with the gun store

1 contacted Fort Campbell who tracked down Mr. Abdo's unit and
2 Mr. Abdo stated he received a call from his first sergeant
3 asking why he was trying to obtain a weapon.

4 Q. Okay. And what happened next?

5 A. Mr. Abdo stated that he wanted it for personal
6 protection. His unit that he was originally assigned to was
7 about to return from Afghanistan and he was afraid that there
8 would be a lot of resentment from other soldiers.

9 Q. This is what he told his first sergeant according to
10 him?

11 A. Yes, sir.

12 Q. Okay. What'd he say happened next?

13 A. A short time later Mr. Abdo was informed to return to
14 his company area at Fort Campbell and on the way to the base he
15 called his lawyer and he just wanted to know why that they
16 would want him at Fort Campbell and his lawyer advised him it
17 was likely they were going to place him in some kind of
18 confinement or watch.

19 Q. And what did he do when he learned this?

20 A. He left. He left the area.

21 Q. Did he tell you where he was going?

22 A. He traveled to Nashville by way of taxi.

23 Q. Okay. Now, before he left did the defendant explain
24 to you anything about a -- anything in particular that he had
25 planned in the Fort Campbell area before he decided to leave?

1 A. Yes, sir. During the interviews he explained that --
2 we questioned him about some suspicious materials that were
3 found inside of his car that he had left in the Fort Campbell
4 area.

5 Q. Had you learned that before interviewing him?

6 A. No. We learned that after we had started -- we
7 had -- we were -- people were calling in with information
8 things that were found.

9 Q. Okay. Go ahead.

10 A. And, you know, we questioned him as to what these
11 materials were used for. They were materials such as
12 handcuffs, a cattle prod, a shovel, bleach, a black sheet, I
13 think a plastic bag. And during the interview he explained
14 that he had planned on offering an unidentified soldier a ride
15 in his car and incapacitating the soldier and murdering the
16 soldier. We -- we asked him several times if he had any
17 particular person in mind and he said not really. There was
18 no -- no one particular person that he had pinpointed. He
19 explained that he wanted to videotape it as well. Videotape
20 the murder and during the murder he wanted to recite the names
21 of Muslims who he felt had been wronged by the United States
22 government.

23 Q. Did he give you any particular names?

24 A. Yes, sir. Nidal Hasan who's a suspect -- suspected
25 shooter in Fort Hood in 2009 as well as a 14-year-old female

1 who was raped and murdered by members of the 101st Airborne
2 Division. I believe her name was Abeer Qasam Al-Jonabi.

3 Q. Did he describe, other than what you've described so
4 far, what items he was going to use? Did he say anything else
5 further about the items that you recall?

6 A. Yes, sir. He -- he said he planned to videotape it.
7 The shovel would be used to get rid of the evidence. The
8 bleach as well would be used to bleach the crime scene to get
9 rid of any evidence that would be left behind.

10 Q. Did he tell you what he had done with the items? Did
11 he explain what he had done with the items?

12 A. Yes, sir. He said he ditched them. He said he had
13 also ditched his car, left his car at a Waffle House near Fort
14 Campbell before he left.

15 Q. Did you ask the defendant whether he would have gone
16 through with the plan --

17 A. Yes, sir.

18 Q. -- had he not fled?

19 A. Yes, sir. I did ask him, you know, if circumstances
20 were that he had not left the Fort Campbell area did he feel
21 like he would actually have gone through with that and he
22 stated yes. He would have.

23 Q. Okay. Now, did -- you said the defendant told you he
24 went to where after he fled that area?

25 A. Nashville, Tennessee.

1 Q. Okay. And did he tell you how he traveled there?

2 A. Yes, sir. By taxi.

3 Q. Did he say anything to you about whether he ever
4 intended to return to Fort Campbell or not?

5 A. Several times he stated that it was never his
6 intention to return to Fort Campbell.

7 Q. Did he say he took anything with him?

8 A. Yes, sir. He said he kept a contingency bag like a
9 backpack in his car on the off chance that he would have to
10 leave the area quickly. He described that he had some clothes
11 and a Gerber tool inside the contingency bag.

12 Q. And what was that -- what kind of bag was it?

13 A. I believe he said it was a backpack.

14 Q. Okay. Did the defendant tell you that he arrived in
15 Nashville?

16 A. Yes, sir.

17 Q. And did he tell you what he did there?

18 A. He said he attended the mosque while he was there.
19 We also discovered in the second interview that he had in fact
20 purchased a firearm while he was there.

21 Q. Okay. And can you describe the circumstances as the
22 defendant related them to you as to how it is he bought a gun
23 in the Nashville area?

24 A. Yes, sir. He stated that he had found the firearm
25 online on Craig's List and contacted the owner, met with the

1 owner and purchased the firearm for approximately \$200.

2 Q. Did you ask him whether there was a record or not of
3 that transaction?

4 A. Yes, sir. We asked him if there was any proof and he
5 said he had received a bill of sale.

6 Q. Okay. Did you tell him what kind of gun he bought?
7 I'm sorry. Did he tell you what type of gun?

8 A. Yes, sir. A Springfield XD .40.

9 Q. Did he tell you how much it cost?

10 A. Roughly \$200.

11 Q. Did the defendant tell you where that gun was at the
12 time he was apprehended on July 27th of 2011?

13 A. It was in his backpack.

14 Q. Did the defendant tell you how long he stayed in the
15 Nashville area?

16 A. We never got a definitive number of days but he said
17 a few days.

18 Q. Okay. And did he say where he stayed there?

19 A. He stayed in the hotel.

20 Q. Did the defendant indicate where he went next?

21 A. Yes, sir. He traveled to -- from Nashville to
22 Memphis, Tennessee by Greyhound bus.

23 Q. And did he tell you where he was staying or what he
24 did in Memphis, Tennessee?

25 A. He said initially he stayed with a gentleman. He

1 didn't provide us a name but the gentleman gave him a place in
2 his home to sleep. He said after a few days he found a room in
3 sort of a boarding house that he rented out after he left this
4 gentleman's house.

5 Q. By the way, did the defendant tell you how he paid
6 for his expenses during his travel and the gun and the other
7 things that he purchased?

8 A. Yes, sir. He said he paid in cash and/or like gift
9 cards.

10 Q. Did he indicate how long he stayed in Memphis?

11 A. He said approximately two weeks.

12 Q. Did he tell you that he left Memphis or not?

13 A. Yes, sir.

14 Q. Did he tell you how he traveled?

15 A. He said he left on a Greyhound bus.

16 Q. Did he indicate where he went?

17 A. To Dallas, Texas. Yes, sir.

18 Q. Did the defendant indicate to you why he went to
19 Dallas, Texas?

20 A. During the interview he made it clear that -- at
21 first, you know, he said it was either get to a safe house or
22 martyr myself. He spoke of his father being in Jordan overseas
23 in Jordan and he considered trying to make his way out of the
24 country and to Jordan to be with his father. He wanted to go
25 to Edinburg, Texas which is in South Texas. He remembered

1 Edinburg, Texas because when he was younger his father was in a
2 prison in South Texas near the City of Edinburg and he traveled
3 to Edinburg three different times and he was taken in by a
4 gentleman -- an elderly gentleman in Edinburg, Texas and he
5 thought maybe if he could get there he could lay low for awhile
6 and consider his next course of action. And Dallas was the
7 obvious route between Memphis and Edinburg, Texas.

8 Q. Did he -- did he know anyone in Dallas?

9 A. Yes, sir. Being from the area, you know, he knew
10 several people. He actually stated that he met with two
11 individuals two friends in Dallas. He stated that he was
12 hoping he could get some help from them like shelter and a
13 place to stay. He explained a situation that -- of why he had
14 left Fort Campbell. He mentioned that there was an operation
15 he was considering. He didn't really go into details about
16 that at that time; however, he said his friends were not eager
17 to help him and he got scared at that point and thought that
18 they would contact authorities and turn him in.

19 Q. Okay. When you say operation, what did you take that
20 to mean?

21 A. Some kind of attack.

22 Q. Okay. And you said that once they wouldn't help him
23 he felt he had to leave immediately?

24 A. Yes, sir.

25 Q. Before leaving did he tell you whether he went

1 anywhere?

2 A. Yes, sir. He said he went to Walmart.

3 Q. Did he explain how he traveled to Walmart?

4 A. By taxi.

5 Q. Did he state what he was doing at Walmart?

6 A. Yes, sir. He said he had to buy some items. He also
7 purchased a computer. He stated that he had returned a
8 computer that he had in Memphis before he left and when he got
9 to Dallas before he left Dallas he went to Walmart and
10 purchased another computer and some other items. We found out
11 later in the interview he purchased the pressure cooker.

12 Q. Okay.

13 A. Pressure cookers.

14 Q. Among other things?

15 A. Yes, sir.

16 Q. Did he also purchase telephones of any kind?

17 A. Yes, sir. He said he would often purchase the
18 prepaid cellular phones.

19 Q. Did he say why he was returning computers and buying
20 multiple phones?

21 A. Yes, sir. I mean, his exact words were, you guys are
22 good at what you do. I mean, the government is good at what
23 they do. He was afraid he could be tracked if he used the same
24 cell phone too long or computer.

25 Q. Okay. Did the defendant explain how he paid for the

1 items at Walmart?

2 A. Yes. Cash. He explained that before he left Fort
3 Campbell he had received his final installment of his
4 enlistment bonus, roughly \$3,000, and taken money out of his
5 bank account. And he said he also purchased gift cards, \$100
6 gift cards and used those as well.

7 Q. Used those to purchase the items?

8 A. Uh-huh.

9 Q. Okay. Did he explain to you where the computer that
10 he purchased at Walmart was when he was apprehended on July
11 27th, 2011?

12 A. Yes, sir. It was in his backpack as well.

13 Q. Did you ask the defendant whether he had any credit
14 cards that he could use?

15 A. Yes, sir. He indicated he did have a credit card
16 through the Navy Federal Credit Union. I think he might have
17 had another one, too.

18 Q. Okay. Did he indicate why he wasn't using his credit
19 cards?

20 A. Yes, sir. He was afraid if he used his credit cards
21 he could be tracked and could be found.

22 Q. Did the defendant indicate whether or not he did in
23 fact leave Dallas?

24 A. Yes, sir. He left.

25 Q. And did he explain where he wanted to go next?

1 A. He -- he -- he explained that the same taxi cab
2 driver that drove him to Walmart was with him and he asked the
3 taxi driver if he could get Mr. Abdo to Edinburg, Texas. The
4 taxi cab driver said he could get him only --

5 MR. BOYD: Your Honor, I'm going to object as to hearsay.

6 THE COURT: Ask the question again, Counsel.

7 BY MR. SOFER:

8 Q. Did he indicate to you where he was going next and
9 why?

10 A. Yes, sir. He said he was going to go to Killeen.

11 Q. Okay. Did he explain how it is he decided to go to
12 Killeen? You don't have to relate what other people had said
13 to him.

14 A. Okay. He told me that he was unable to get -- to
15 make his way down to Edinburg. He didn't want to go to Austin
16 because there was nothing for him in Austin. He looked at a
17 map and noticed that the City of Killeen was between Dallas and
18 Austin.

19 Q. Okay. And what did he notice or recognize about the
20 City of Killeen, if anything?

21 A. He said he had recognized the name of the city from
22 being in the news, specifically the publicity it got regarding
23 the attacks at Fort Hood in 2009.

24 Q. So what did you understand it to mean that he decided
25 to go there?

1 A. He stated that at that point he decided to go to
2 Killeen and martyr himself.

3 Q. Okay. And when you say martyr himself, what did you
4 understand that to mean?

5 A. Conduct an attack and continue until he was dead.

6 Q. Did he tell you whether he made it to Killeen?

7 A. Yes, sir.

8 Q. And did he indicate when he arrived in Killeen?

9 A. He stated the same day that he checked into the
10 Best -- America's Best Value Inn.

11 Q. Did he indicate which room or rooms he stayed in
12 while at the hotel?

13 A. He stated initially he was in Room 248 which was a
14 double and he moved into -- he later moved into Room 230
15 because he just wanted a single not a double.

16 Q. And did you ask the defendant why it was that he came
17 to Killeen? Did you ask him that?

18 A. Yes, sir. When I first asked him, you know, why he
19 was here, he stated he made it clear and the press didn't
20 really understand what that meant. But the defendant stated
21 that he came here to martyr himself to -- he stated that he
22 wanted to attack soldiers at a local Chinese buffet restaurant,
23 detonate a bomb, follow that up with gunfire until he was
24 either killed or subdued.

25 Q. Did you ask him why not attack Fort Campbell from

1 where he came?

2 A. Yes. I did.

3 Q. Do you recall his answer?

4 A. I'm sorry?

5 Q. Do you recall his answer?

6 A. Not right off. If I could look at my notes I can
7 tell you.

8 Q. Okay. We'll come back to that. Did the defendant
9 describe to you what he meant by becoming a martyr?

10 A. One more time. I'm sorry.

11 Q. Did he describe to you what he meant by the term
12 "martyr"? Did he discuss martyrdom with you?

13 A. Yes, sir. He -- he broke it down. He started
14 talking about for martyrdom to be accepted in Islam you have to
15 do it for the right reasons. He stated that he wanted to do it
16 for the sake of the men, women and children of Iraq and
17 Afghanistan who felt he -- who felt had been wronged. He spoke
18 about atrocities committed against them by the United States
19 government and he also said that he -- he decided to do it in
20 Killeen rather than Fort Campbell because he wanted to give
21 faith to brethren Nidal. I took that to mean Nidal Hasan. He
22 said referring to Nidal he said people think he's crazy. He's
23 not crazy. I came here to remind the people.

24 Q. Did you ask the defendant with any particularity how
25 he intended to fulfill his wish to die a martyr?

1 A. Yes, sir. He -- during the course of both interviews
2 we were able to put together that he wanted to build an
3 explosive device out of a pressure cooker and disguise it in a
4 gift box and wrap it up and take it into an unidentified
5 Chinese restaurant in the Killeen area and he then would wait
6 outside for the bomb to detonate and at that point he would
7 follow it up with gunfire on the remaining survivors until like
8 I said he was either killed or subdued.

9 Q. Did he say anything in particular to you about
10 Chinese restaurants why he chose that and what he was looking
11 to do there?

12 A. Yes, sir. He said based on his experience in the
13 military soldiers like to eat at Chinese buffets and he
14 explained that he planned on conducting the attack between
15 11:00 a.m. and 2:00 p.m. because again based on his experience
16 those -- those areas are filled with American soldiers.

17 Q. Did he indicate to you where the items were that he
18 was using to build the bomb? Where they were -- where they had
19 been stored?

20 A. Yes, sir. In his hotel room.

21 Q. Okay. Did he indicate whether or not he chose to do
22 the attack on or off the base and why he made that decision?

23 A. Yes, sir. We asked him if he had -- if he decided --
24 you know, if he had intended to do it on or off post and he
25 said that it was never his intention to go on post. He wanted

1 to do it at an off post restaurant. We asked him why and he
2 said, number one, he was unfamiliar with the area and he was
3 afraid that he would be stopped at the main gate and not
4 allowed entry.

5 Q. Did he indicate to you anything about purchasing a
6 uniform?

7 A. Yes, sir. He said he had purchased an Army combat
8 uniform at a surplus store off post.

9 Q. Did he say why?

10 A. Yes, sir. He said he was in a military town and it
11 was necessary to fit in.

12 Q. Had he indicated to you anything about when this
13 attack was going to take place?

14 A. Okay. On the 27th the first day I asked him that
15 question and he stated that he was going to build the device on
16 that day on the 27th and his plan was to get that -- conduct
17 the attack on the 28th. He laughed and then he said his
18 intention was actually -- his initial intention was to do it
19 yesterday which would have been the 26th.

20 Q. Did he indicate to you whether or not he was
21 concerned about killing anyone other than soldiers?

22 A. Yes, sir. We spoke about the fact that there would
23 be civilians working at that restaurant possibly eating there,
24 too.

25 Q. How did he refer to those civilians?

1 A. He said he understood and he referred to civilians as
2 collateral damage. He said in a time of war innocent people
3 are sometimes killed and he referred to them as collateral
4 damage.

5 Q. Did you ask him whether or not he had any help in
6 doing this?

7 A. Yes, sir. Several occasions we -- that was probably
8 our biggest fear that there might have been somebody else and
9 he was adamant the whole time that he acted alone. He stated
10 that, you know, he was just a Muslim trying to fulfill his
11 Islamic duties.

12 Q. Now, did you ask him anything about the -- with any
13 specificity about how he was going about building the bomb?

14 A. Yes, sir. He stated that he intended to put shrapnel
15 and gun powder inside of a pressure cooker, connect wires to a
16 light, connect it to the battery and a clock and with a timer
17 and when the timer -- when the clock wound down, the circuit
18 would close causing the bomb to detonate under the pressure of
19 the pressure cooker.

20 Q. Okay. And again did he indicate what he was going to
21 be doing during that time?

22 A. Yes, sir. He stated that he would be waiting
23 outside.

24 Q. To do what?

25 A. Wait for the explosion and then after the explosion

1 follow up and shoot the remaining survivors until he was killed
2 or subdued.

3 Q. Did you ask him whether or not he had any
4 instructions about how to build the device?

5 A. Yes, sir. He said he got the recipe for making the
6 explosive device from Inspire magazine.

7 Q. Okay. And did he indicate where he got that Inspire
8 magazine from? Did you ask him about that?

9 A. He said he downloaded Inspire magazine a total of six
10 times. He stated that while in Nashville he had actually
11 printed a copy out at a public library but in Killeen -- once
12 he got to Killeen he download the same issue again because he
13 needed the color copy because he needed to look at the wiring
14 diagram on the color copy.

15 Q. Did he ever -- did he indicate that was what he was
16 using to build the bomb or what?

17 A. Yes, sir.

18 Q. Okay. And did he ever indicate that he was building
19 more than one device to you or not?

20 A. We asked him why there were two pressure cookers
21 found inside the room and he stated that he initially planned
22 to make two explosive devices; however, they were different
23 evidences. One was eight quart and I believe the other one was
24 16 quarts and he didn't have enough gun powder to build two.

25 Q. Did he indicate to you what he was doing or where he

1 was going at or near the time he was actually apprehended by
2 the police?

3 A. Yes, sir. He explained that was actually -- the 27th
4 was actually a recon date or reconnaissance day. He was going
5 to go -- he said he had to go to Walmart and buy a few things
6 or return a few things and that he was going to go eat at a
7 Chinese buffet and kind of scout it out.

8 MR. SOFER: One moment, Your Honor, please.

9 (Conference between government counsel.)

10 BY MR. SOFER:

11 Q. Just to clarify, you had stated before that the
12 defendant planned to shoot survivors.

13 A. Uh-huh.

14 Q. Were those surviving soldiers?

15 A. Yes.

16 Q. Okay.

17 A. That's what I took it to mean. Yes.

18 Q. And again to be clear we're talking about a
19 restaurant that was in Killeen, Texas within the Western
20 District of Texas, Waco Division; is that correct?

21 A. Yes, sir.

22 MR. SOFER: Pass the witness, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. BOYD:

25 Q. Good morning.

1 A. How are you doing? Good morning.

2 Q. Did you have the opportunity to write a report?

3 A. Yes, sir.

4 Q. Where in the report does it state he was going to use
5 the 27th as a day to recon?

6 A. It doesn't say that in the report.

7 Q. So you just added that today for the first time?

8 A. No, sir. It was in the notes.

9 Q. Okay. Isn't it true he wasn't using the 27th for a
10 scouting day?

11 A. No. He told us it was a recon day in the interview.

12 Q. Didn't he actually admit to you in your report on
13 Page 13 that he did not have enough materials to construct a
14 bomb?

15 A. No. He said he didn't have enough materials to make
16 two bombs.

17 MR. BOYD: Your Honor, may I approach the witness?

18 THE COURT: Yes, sir.

19 BY MR. BOYD:

20 Q. Does that document help to refresh your recollection?

21 A. Yes, sir.

22 Q. And does it state that he admitted to you that he did
23 not have enough materials to construct a bomb?

24 A. Yes, sir. That's what this says; however, in the
25 interview --

1 MR. BOYD: Your Honor, I'm going to object as
2 nonresponsive.

3 THE COURT: Sustained.

4 BY MR. BOYD:

5 Q. The first time you answered Mr. Sofer's question
6 regarding my client supposedly hanging around, you didn't
7 mention soldiers and it was only at his prompting that you
8 subsequently added that?

9 A. And I stated that's how I took it to mean.

10 Q. Right. But that was only after his prompting, right?

11 MR. SOFER: Objection, Your Honor. The jury was here to
12 hear the question.

13 THE COURT: If that was an objection, it's overruled.

14 BY THE WITNESS:

15 A. That's the way I took it the first time he said it.

16 BY MR. BOYD:

17 Q. But you didn't offer it the first time he said it?

18 A. I'm sorry?

19 Q. But you didn't offer that the first time he said it?

20 A. No, sir. What do you mean? The first time who said
21 it?

22 Q. You didn't offer any information about the soldiers
23 the first time you were asked the question, did you?

24 A. No, but, I mean, that's the way I took it. That's --
25 from the day that he said it from the 27th of July that's what

1 I intended him to mean -- or that's what I thought he intended
2 to mean.

3 Q. There's no charges pending for anything that happened
4 outside of the State of Texas with regards to anything
5 recovered at a Waffle House, is there?

6 MR. SOFER: Objection to relevance, Your Honor.

7 THE COURT: Overruled.

8 BY THE WITNESS:

9 A. I'm sorry?

10 BY MR. BOYD:

11 Q. There's no charges with respect to anything that
12 happened outside of Texas at the Waffle House in either the
13 Kentucky or Tennessee area, is there?

14 A. I'm not sure. I don't know.

15 Q. No device had been built, had it?

16 A. At the time I had no idea. I later learned through
17 the investigation that it looked like he had started to build
18 the device.

19 Q. So there was a device in the backpack?

20 A. No, sir. No. The materials were in his room.

21 Q. Okay. There was a device in the room?

22 A. I'm sorry?

23 Q. So there was a device or a partially built device in
24 the room?

25 A. The materials to build the device were in the room

1 and I've seen pictures and it looked like he had began to put
2 shrapnel in one of the pressure cookers.

3 Q. But you're aware, aren't you -- you've seen the
4 pictures, right?

5 A. Some.

6 Q. And you're aware and you've had a chance to review
7 all the evidence, right?

8 A. Uh-huh.

9 Q. And you're also --

10 A. Not all the evidence. No.

11 Q. You're also aware that the EOD team moved everything
12 in that room before the pictures were taken, aren't you?

13 A. I have no idea what happened in that room. I wasn't
14 there.

15 Q. So you really don't know if a device had even been
16 started?

17 A. I've seen the photos of the device or the pressure
18 cooker in the room with what appears to be shrapnel inside of
19 it.

20 Q. He never specifically told you how a device was going
21 to be built, did he?

22 A. He -- not down to the specifics, but he -- yeah. He
23 explained that he intended to put shrapnel and gun powder
24 inside of a pressure cooker.

25 Q. But you took some -- you took some liberty with

1 your -- with your testimony previously because what you did was
2 you added what you had read from the Inspire magazine to what
3 he told you, right?

4 A. No, sir. Huh-uh. I had not -- I didn't see the
5 Inspire magazine article until a good time after I wrote the
6 302.

7 Q. A couple more questions. Towards the end of your
8 direct you indicated that the 27th was a recon day?

9 A. Uh-huh.

10 Q. Which wasn't contained in your report but that came
11 out today, right?

12 A. Right, but I can explain.

13 Q. But previous to that you stated that he was going to
14 be building the device on the 27th. So which was it?

15 A. The way he said it is we asked him when he was going
16 to conduct the operation and he stated he intended to construct
17 the bomb today, being the 27th, and conduct the attack
18 tomorrow, which would have been the 28th, and then he left and
19 said he intended to do it yesterday. That's exactly how that
20 dialogue went.

21 Q. And so then there was another one that said --
22 according to you that he said the 26th the day before?

23 A. Yes. That's what I just said, sir.

24 Q. So --

25 A. I was just reiterating. I'm sorry?

1 Q. You would agree with me that's an impossibility?

2 A. No. I mean, I can see where it could be confusing;
3 however, that is exactly the way that Mr. Abdo explained it to
4 us. When I asked him when he planned on conducting the attack,
5 he said he planned on constructing the bomb today -- or the
6 explosive device -- being the 27th, conduct the operation on
7 the 28th which -- or the -- tomorrow which would have been the
8 28th. Then he laughed and he said my intention was to do it
9 yesterday which would have been the 26th. I know that sounds
10 convoluted, but regardless, that's exactly what he told me.

11 Q. He also told you that he was upset about the way the
12 Army had treated him, didn't he?

13 A. Yes, sir. Yeah. He said that he -- he didn't have
14 any friends and he was upset that his CO or his conscientious
15 objector status was taking so long or had taken so long.

16 Q. And in fact that it had been granted?

17 A. Yes, sir.

18 Q. Did he tell you how long it had taken?

19 A. I'm sure he did, but I don't remember.

20 Q. Did he tell you anything else he was upset about?

21 A. Like I said in -- initially he talked about the
22 14-year-old Muslim girl who had been raped and murdered by
23 members of the 101st Airborne.

24 Q. Lastly you talked about this mysterious Chinese food
25 restaurant.

1 A. Uh-huh.

2 Q. What Chinese food restaurant are we talking about?

3 A. I don't know. I don't remember him ever specifically
4 saying which one, but he did say a Chinese food -- Chinese
5 buffet near Fort Hood.

6 Q. Then how were you going to attack something that you
7 don't know what it is? Could you --

8 A. He said the 27th was a recon day and he said that he
9 was going to a Chinese buffet to eat, possibly to scout out.

10 Q. Could you attack something that you don't know what
11 it is?

12 MR. SOFER: Objection as to relevance, Your Honor.

13 THE COURT: Sustained.

14 MR. SOFER: No further questions from the government,
15 Judge.

16 THE COURT: You may step down, sir.

17 Next witness?

18 MR. FRAZIER: Elizabeth Gilliland will be our next
19 witness.

20 (The witness was sworn.)

21 DIRECT EXAMINATION

22 BY MR. FRAZIER:

23 Q. And would you please introduce yourself to the ladies
24 and gentlemen of the jury?

25 A. Yes. I'm Elizabeth Ann Gilliland.

1 Q. And, Ms. Gilliland, how are you currently employed?

2 A. I currently work for [REDACTED]. We walk
3 around and do presets and resets small arms and optics.

4 Q. Okay. And do you -- is that a contracting agency?

5 A. Yes. It's a contracting agency.

6 Q. Who do you normally work for, provide services for?

7 A. The U.S. military [REDACTED].

8 Q. Okay. If you could pull the microphone maybe a
9 little closer to you. That will slide over to you.

10 A. Right here?

11 Q. A little bit closer. That's good.

12 A. All right.

13 Q. Back in July of last year specifically around July
14 the 3rd of last year where did you work?

15 A. I worked for Quantico Tactical.

16 Q. And where is that located at?

17 A. It is located in Kentucky.

18 Q. Where in Kentucky?

19 A. Fort Campbell, Kentucky.

20 Q. Okay. Is it located actually on the military
21 installation?

22 A. No, sir. It's outside of Gate 4.

23 Q. All right. And what type of business is Quantico
24 Tactical?

25 A. They sell firearms and tactical equipment for the

1 military and police.

2 Q. All right. And that particular day July the 3rd what
3 day of the week was that?

4 A. That was a Sunday.

5 Q. And in Tennessee are firearms places or, you know,
6 places that sell firearms, things of that nature open on
7 Sundays?

8 A. Yes. They're open on Sunday.

9 Q. And is Quantico Tactical what's known as a federally
10 licensed firearm dealer?

11 A. Yes. They have an FFL. Yes.

12 Q. Okay. And how long had -- as of July the 3rd had you
13 worked there and had been selling firearms?

14 A. Selling firearms for a year.

15 Q. Okay. And prior to that what else did you do for
16 Quantico Tactical?

17 A. I did the internet sales.

18 Q. All right. And are you familiar with weapons, how
19 they're used, capabilities, in other words, have a familiarity
20 with weapons such that you can answer the questions of
21 customers who inquire about them?

22 A. Yes. And if I don't, I had the resources to follow
23 through with any questions they might have.

24 Q. All right. I'm going to direct your attention to
25 July 3rd. On that date did you come into contact with a person

1 who came in that you were later able to identify?

2 A. Yes.

3 Q. Okay. I'm showing you what's been previously
4 introduced into evidence as Government's Exhibit No. 153A and
5 153B. Do you recognize that photo?

6 A. Yes, sir.

7 Q. Did -- at the time this person came into your -- is
8 this the person who came into your store on this date?

9 A. Yes. Yes.

10 Q. Tell us about what time this person depicted in the
11 photograph came into your store.

12 A. It was sometime between 12:00 and 1:00 o'clock.

13 Q. Okay. Did you later learn that person's name to be
14 Naser Jason Abdo?

15 A. Yes, sir. Later in the day I did.

16 Q. All right. Now, what happened when this person
17 Mr. Abdo first came into your store?

18 A. He came in and was asking about different firearms,
19 magazine capacity, which -- how many rounds of a bullet will
20 the gun hold. He had mentioned black powder at one point in
21 time. He seemed very unfamiliar with the weapons so we gave
22 him all the information we thought he might need to be able to
23 better understand and he pretty much left with that. We...

24 Q. All right. What particular type of weapons was
25 Mr. Abdo interested in?

1 A. We showed him three different types: A nine, a .40
2 and a .45. He seemed very interested in the .45 for the amount
3 of rounds it could hold and what we would call a knockdown
4 power or the force that it hits a person and damage that it
5 causes.

6 Q. Okay. And you mentioned that these were -- I don't
7 know if you used the term "high capacity." What does --

8 A. High capacity. They --

9 Q. What does that mean?

10 A. Most .45s only hold six to seven rounds. The ones he
11 was interested in holds 13 rounds in the magazine plus one in
12 the chamber. So we could call that 13 plus one.

13 Q. All right. And when you say high knockdown power,
14 what does that mean?

15 A. It's going to cause an incredible amount of damage.
16 A 9-millimeter would not be as damaging as a -- a .40 would be
17 more damaging and a .45 would be a much more higher round,
18 would cause more bodily damage.

19 Q. All right. How was Mr. Abdo dressed when he came
20 into the store?

21 A. As a civilian.

22 Q. Okay. Was he wearing anything on his face?

23 A. He was wearing sunglasses which he never took off.

24 Q. Okay. And what was his demeanor when you were
25 dealing with Mr. Abdo in the store?

1 A. A little bit arrogant. He just seemed a little
2 suspicious. Nothing I really caught onto until later, but as
3 things happened, his behavior was very alarming, cautioning,
4 just caused a bunch of flags. I didn't feel good about the
5 whole thing.

6 Q. All right. You said something about black powder.
7 He asked about black powder. What did he ask?

8 A. He did ask about black powder did we have any. We
9 didn't. We did not sell black powder. We gave him information
10 on how to get it, maybe some other stores to reference to and
11 there's an internet company in Clarksville and -- but they were
12 not open that day and you would have to go to the company,
13 order it and then wait.

14 Q. Now, did that strike you as odd at all that he asked
15 about black powder?

16 A. It's something we didn't sell. Yeah. It was kind of
17 odd that we -- that's not something we deal in very often and
18 it's not asked for a whole lot --

19 Q. Was black powder --

20 A. -- especially since he didn't seem to know a whole
21 lot for someone to be asking about black powder is unusual
22 because most people who load their own ammo wouldn't ask things
23 like that.

24 Q. And would black powder be something in any way
25 associated with 45-caliber or 40-caliber?

1 A. No, sir. Not that -- not unless he was doing it
2 himself.

3 Q. So how did the visit end with Mr. Abdo on that
4 date -- that first visit with Mr. Abdo, how did that end?

5 A. The first visit he left like he was going to --

6 Q. But before he left did you talk to him about going to
7 other places, things of that nature?

8 A. Oh, yes. I do my job well. Very good customer
9 service oriented. I gave him many places to go talk to, to
10 visit, to maybe fire weapons at so he could get better training
11 in the area and then he left.

12 Q. Was that because of his lack of knowledge?

13 A. Yes. That was because of his lack of knowledge.

14 Q. Okay. Now, when he left the store -- how long was he
15 there the first time?

16 A. He was there probably 20, 25 minutes.

17 Q. Okay. And after -- would there come a time -- did he
18 come back in the same -- to your store later the same day?

19 A. Yes. He did come back into our store. On Sundays
20 we're open 12:00 to 5:00. He came in about 4:30 and was very
21 adamant and in a hurry. I want to get the weapon and I'm
22 ready, you know, like he wanted to get it right then and walk
23 out.

24 Q. Okay.

25 A. And I slowed things down because at this point you

1 have paperwork you have to fill out, a 4473 which is a form
2 where the -- that we run a background check through the NICS
3 which is who eventually tells you yes or no, that they can get
4 the gun.

5 Q. Okay. Did you in fact take over the sale for another
6 coworker?

7 A. At that point I took over the sale because we had
8 already discussed how neither one of us felt very good about
9 the situation and how he was behaving.

10 Q. Okay. So when you took over the sale and you got the
11 paperwork, what was the first thing you did? What step did you
12 take?

13 A. In the State of Kentucky if you're military and you
14 have your orders bringing you to Kentucky, you can purchase a
15 firearm.

16 Q. What's the purpose of that? Why do you have to have
17 orders?

18 A. Because he's not a resident and he wouldn't be a
19 resident. So if they have their orders sending them to
20 Kentucky, you can sell them if they have proof. So I took his
21 orders bringing him to Kentucky, his picture ID and we began
22 the paperwork.

23 Q. Okay. Did there come some point in the paperwork
24 where that stopped the -- when you say the paperwork, who fills
25 out the paperwork?

1 A. The person purchasing the firearm has to fill out the
2 paperwork. I give very minimum help because the questions that
3 are asked have to be answered by the person buying the firearm.

4 Q. Okay. And in fact there's a -- and this is the 4473
5 we're talking about?

6 A. Yes, sir. This is a 4473.

7 Q. Does a 4473 contain instructions to help customers
8 answer questions in case they have a question?

9 A. Right. If at any point in time they have a question
10 on it there's explanations in the back of the questionnaire
11 that in detail explain any question asked on the 4473.

12 Q. At some point during the transaction did Mr. Abdo
13 stop at one of the questions having a concern -- or a question
14 for you, rather, not a concern, a question for you about how or
15 to -- or interpretation of the question?

16 A. Yes, sir. He did and he -- I showed him the
17 reference that would explain to him what his questions were.

18 Q. Okay. And that's in the back page of this?

19 A. That's in the back pages.

20 Q. Okay. And why is it that you do that?

21 A. I don't want to influence anybody's answer on a -- on
22 the 4473. They -- it asks questions about mental stability,
23 just all kinds of background. So I don't want to influence
24 anybody's answer --

25 Q. Okay.

1 A. -- whatsoever.

2 Q. So without going into the actual question, at some
3 point on one of the questions he paused?

4 A. He paused. And...

5 Q. You pointed him to the directions?

6 A. Asked me to explain. So I pointed him to the
7 directions and he became very agitated because I wouldn't
8 answer the question for him. I wouldn't answer the question or
9 help him answer the question. It was something that he had to
10 do.

11 Q. Okay. When you say he became very agitated, describe
12 that demeanor for the jury, please.

13 A. He just kept asking, well, what does it mean? How do
14 I answer it? You know, just -- he wanted me basically to
15 explain something that I can't explain to him without answering
16 the question for him.

17 Q. Okay. What happened after that?

18 A. After that he continued to get more agitated and at
19 that point in time I told him that I could not sell him the
20 firearm.

21 Q. What happened after that?

22 A. He got really upset with me. Come across -- I mean,
23 came to my face like this and said, you need to lower your
24 voice. I took a few steps back. I said, I cannot sell you the
25 firearm and you need to leave. And he just got a little bit

1 more agitated and said, you should have known what I was doing.
2 You should have known why I was here. At that point in time I
3 grabbed the ammo and the gun off the counter, took steps back
4 and there were other soldiers and other customers in the store.
5 And I told him in a very loud stern voice, you need to leave.
6 And they all looked. He turned around and left.

7 Q. Okay. And let me stop you there for just a second.
8 You said it was a gun and ammo on the counter. He was buying
9 ammo as well?

10 A. Yes, sir.

11 Q. Was there anything with the particular weapon that he
12 was picking out that came with it that was part of the deal?

13 A. Oh, in the package you -- when you bought the weapon
14 you also got three magazines along with it which that's an
15 unusual -- usually it was a -- like a promotion they were
16 doing.

17 Q. All right. Were these high capacity magazines?

18 A. Yeah. They were all 13 rounds.

19 Q. And do you recall how many rounds of ammunition he
20 was attempting to purchase?

21 A. I do not recall. I know I grabbed one box. There
22 may have been more.

23 Q. All right. Now, after you did -- now we'll go back
24 on track again. After you raised your voice and heads turned
25 toward the counter, what happened then?

1 A. He did leave.

2 Q. Did he take something with him?

3 A. He left his --

4 Q. No. Did he take something with him?

5 A. Oh, he took the form that he was filling out the
6 4473. He wouldn't allow me to get that.

7 Q. All right.

8 A. He did take that.

9 Q. Did he leave the store?

10 A. He left the store, but when he left the store he left
11 his orders bringing him to Fort Campbell. I immediately went
12 and made a copy on the copy machine, sat his original copy on
13 the counter and I told everybody that was in the store if he
14 was to come back do not approach him. Do not talk to him.
15 Stay away from him.

16 Q. Okay. And what did you do after you made the copy?

17 A. After I made the copy I put it on the counter, told
18 everybody to stay away and at that point in time the MP
19 commander had been in the store the day before and I had his
20 name in our database. He's the only person that I knew I
21 could -- I knew I needed to do something right away. So I
22 called him immediately.

23 Q. Okay. And after you called him, without going into
24 what was said, what action did you take upon talking to him?
25 Did you relay to him what had happened?

1 A. Basically. Yes.

2 Q. Okay. And did you have at this point a copy of the
3 orders?

4 A. Yes, sir.

5 Q. Now, before you made the phone call, did Mr. Abdo
6 come back into the store?

7 A. Yes. He did come back in and I'd left the orders on
8 the counter. Nobody talked to him, encountered him or anything
9 and he just walked right back out.

10 Q. Did he take the orders with him?

11 A. Uh-huh.

12 Q. Is that --

13 A. Yes, sir.

14 Q. Okay. I want to show you what's been marked for
15 identification as Government's Exhibit No. 3. Do you recognize
16 this?

17 A. Yes. I do.

18 Q. What is it?

19 A. Those are his orders bringing him from Fort Benning
20 to Fort Campbell.

21 Q. It's a copy -- it's the copy that --

22 A. It is a copy.

23 Q. A copy of the copy that you made?

24 A. Yes, sir.

25 MR. FRAZIER: We'll offer Government's Exhibit No. 3 into

1 evidence.

2 MR. BOYD: As to hearsay contained within the document I
3 have that objection but as to not for proof of the matter
4 concerned within the document itself no objection.

5 MR. FRAZIER: Well, that would be my response to the
6 hearsay objection. It's not being offered for the truth of the
7 matter asserted but the association.

8 THE COURT: I didn't understand the objection. The
9 exhibit is admitted.

10 (Exhibit(s) admitted: G3)

11 BY MR. FRAZIER:

12 Q. So the jury can see, is this the first point that you
13 associated the name with the person who was there in the store?
14 Or I'm sorry. You already had seen the person's name, correct?
15 Mr. Abdo's name. Had you already seen it?

16 A. No. This is the first time I had seen his name when
17 he asked for us to process the paperwork.

18 Q. Okay. And this is what you made a copy of,
19 Government's Exhibit No. 3?

20 A. Yes, sir.

21 Q. Okay. And it contains the name and has the duty
22 assignment to Fort Campbell, Kentucky, the required paperwork
23 he would need to make a purchase of a firearm?

24 A. Yes, sir. Shows where assigned, the date. It has
25 Fort Campbell, Kentucky and it has the order number in the

1 upper left-hand corner.

2 Q. Okay. All right. Now, after -- it was after this
3 when you recovered this that you called the MP on post?

4 A. Yes, sir.

5 Q. And after -- without saying what was said when you
6 called the MP, what were you -- what did you do? What actions
7 did you take upon having a conversation with that MP?

8 A. He asked for me to hand it to a military personnel.

9 Q. And did you do that?

10 A. Yes.

11 Q. Okay. Then what did you do after that after you made
12 that contact?

13 A. After I made that contact I then was worried that he
14 might try to go to other gun companies in the area. I
15 contacted the other gun shops in the area.

16 Q. And told them what?

17 A. I gave them the name and that he had just tried to
18 purchase a firearm and I didn't feel that he should have one,
19 that he really had become -- he really scared me.

20 Q. All right.

21 A. He really did.

22 Q. What other steps did you take?

23 A. I also called the NICS because I'd never made that
24 phone call but I wanted to call and let them know that if he
25 did go into another gun shop that they would be aware and not

1 allow it to be sold to him.

2 Q. What is the NICS so the jury knows?

3 A. The NICS is the background check that you do with the
4 form, the 4473. They -- once a firearm is being sold, you have
5 the paperwork filled out with the appropriate information, you
6 call them and they give you the final say-so.

7 Q. Okay. And NICS is part of the FBI?

8 A. Yes, sir.

9 Q. Okay.

10 A. I called the NICS and then they referenced me to also
11 the Kentucky -- to call for the Kentucky I guess it'd be the
12 FBI and I called them. Called all the other gun shops in the
13 area. Called my boss.

14 Q. Okay.

15 A. Called everybody I could think of.

16 Q. Okay. And do you know what form of payment Mr. Abdo
17 was going to make when making the purchase?

18 A. Yes, sir. He did have cash.

19 Q. I failed to ask you this question, ma'am. Do you
20 know what black powder is?

21 A. Black powder -- to me black powder I use in a muzzle
22 loader. It's -- you can fire it. It does explode. It's
23 flammable. That's as far as -- I mean, the way it -- to me I
24 associate powder with a muzzle loader.

25 Q. All right. Thank you very much.

1 A. Okay.

2 MR. FRAZIER: Nothing further. Pass the witness.

3 THE COURT: We'll take our morning recess at this point,
4 ladies and gentlemen.

5 LAW CLERK: All rise.

6 (Jury exited the courtroom at 10:29.)

7 THE COURT: Be seated, everyone.

8 You may step down, ma'am.

9 Be seated, folks.

10 How many of you out there are sketch artists? I know at
11 least one. Is there just one?

12 Sir, we're happy to have you here applying your trade with
13 one exception. We don't want any sketches of the jury to be
14 shown until I say it's okay. We had at least one, I think two
15 ladies on the jury panel who were excused because of their
16 concern for their own safety regarding this trial which I think
17 was unfounded but they felt that way and we do have eight women
18 on the jury. So I'd prefer that their sketches not be shown
19 during the trial for their own -- so that they're not concerned
20 themselves.

21 Any reason why the Marshals can't just put those glasses
22 in their pockets when the jury's in the courtroom? You look
23 like members of the Noze Brotherhood and some people who live
24 in Waco might wonder why we have Noze Brotherhood members in
25 the courtroom.

1 All right. That'll be done. We'll take our recess.

2 LAW CLERK: All rise.

3 Court will stand in recess for 15 minutes.

4 (A break was taken from 10:30 to 10:51.)

5 LAW CLERK: All rise.

6 (The jury entered the courtroom at 10:51.)

7 THE COURT: Be seated, everyone.

8 Mr. Boyd?

9 CROSS-EXAMINATION

10 BY MR. BOYD:

11 Q. Good morning, Ms. Gilliland. I'm Zachary Boyd. It's
12 nice to meet you.

13 A. Good morning.

14 Q. Now, previously you testified that you spoke with
15 someone and gave a report in this matter? Did you speak with
16 someone and give a report in this matter?

17 A. At one point in time? When I called the FBI? When I
18 called the NICS?

19 Q. Did you speak with the FBI sometime in July?

20 A. There had been an officer that called me in Kentucky.
21 He had called me.

22 Q. And was that a Special Agent Wood?

23 A. I don't recall his name. I'm sorry.

24 Q. And at that time you didn't report anything about
25 black powder, did you?

1 A. At that point in time he was speaking to me and
2 another employee.

3 Q. And you didn't report anything about black powder,
4 did you?

5 A. Not that I recall, sir. I'd have to...

6 Q. And in fact you didn't develop this stuff about black
7 powder until later?

8 A. Sir, I was very upset when everything went down.

9 Q. And in fact nothing that you have to offer in court
10 today has anything to do with what happened in Texas, does it?

11 MR. FRAZIER: I'm going to object. That calls for a
12 conclusion, Your Honor. The witness is not qualified to answer
13 the question.

14 THE COURT: Sustain the objection.

15 BY MR. BOYD:

16 Q. Did you sell him a firearm?

17 A. No, sir. I did not sell him the firearm.

18 Q. Did you sell him anything?

19 A. No, sir. I did not.

20 Q. Did you sell him black powder?

21 A. No, sir.

22 Q. You reported that he drove away in a Pontiac?

23 A. No, sir.

24 Q. Is that correct?

25 A. I did not report that.

1 Q. You did not?

2 A. No, sir.

3 Q. So how would it get in a police report?

4 MR. FRAZIER: If he's attempting to impeach the witness,
5 Your Honor, I object because it's improper.

6 THE COURT: It's not improper to try and impeach the
7 witness, Counsel. Overruled.

8 BY MR. BOYD:

9 Q. How would it get there?

10 A. I did not report that he drove away in a Pontiac.

11 MR. BOYD: Okay. Nothing further.

12 MR. FRAZIER: Nothing further, Your Honor.

13 THE COURT: You may step down, ma'am.

14 THE WITNESS: Thank you.

15 THE COURT: May this witness be excused?

16 MR. FRAZIER: Yes, sir.

17 MR. BOYD: No objection.

18 THE COURT: You're excused, ma'am.

19 MR. SCHNEIDER: The government calls Gregory Eldridge.

20 (The witness was sworn.)

21 DIRECT EXAMINATION

22 BY MR. SCHNEIDER:

23 Q. Good morning, Captain Eldridge.

24 A. Good morning.

25 Q. By whom are you employed?

1 A. The United States Army.

2 Q. And how long have you been employed by the United
3 States Army?

4 A. Almost ten years.

5 Q. What is your current rank within the Army?

6 A. I'm a captain.

7 Q. How long have you been a captain?

8 A. Just over six years.

9 MR. BOYD: Your Honor, may we briefly approach?

10 THE COURT: Yes, sir.

11 (On-the-record bench conference, to wit:

12 MR. BOYD: Your Honor, I just want to make sure that he's
13 in compliance with the federal laws regarding testimony by a
14 service member. He would have had to have been requested and
15 sought approval from the litigation division.

16 THE COURT: That's not our concern in this courtroom, Mr.
17 Boyd. That may be a military matter that you -- he may be
18 concerned with, the military might be, but I'm not.

19 MR. BOYD: But, Your Honor, I believe --

20 THE COURT: Step back.

21 (End of bench conference.)

22 BY MR. SCHNEIDER:

23 Q. What is your current assignment, Captain?

24 A. Currently I'm assigned to Fort Meade, Maryland in
25 First Army Division East.

1 Q. And in July of 2011 where were you assigned?

2 A. I was assigned to First Brigade 101st in Fort
3 Campbell, Kentucky.

4 Q. And when you were assigned in Fort Campbell, Kentucky
5 last July, what were your responsibilities?

6 A. I was the company commander for HHC First Brigade. I
7 was responsible for the health, welfare, training and morale of
8 a 200 person organization.

9 Q. And did that number of soldiers include the defendant
10 in this case Naser Jason Abdo?

11 A. Yes, sir.

12 Q. At the time of July 2011 did you know Naser Jason
13 Abdo?

14 A. Yes, sir.

15 Q. And what was his rank at that time?

16 A. He was a private first class E-3.

17 Q. Did you have any type of personal interaction with
18 him at that time?

19 A. A few times I'd run into him during inventories while
20 I was walking around the company area.

21 Q. Okay. And I'd like to show you Government's Exhibit
22 153A and B already in evidence. Do you recognize that picture?

23 A. Yes, sir.

24 Q. And what is it a picture of?

25 A. PFC Abdo.

1 Q. And is that a fair and accurate picture of the way he
2 looked when you knew him in July of 2011?

3 A. Yes, sir.

4 Q. Okay. And that's 153A and 153B.

5 Now, directing your attention to Monday, July 4th of 2011.
6 Were you working that day?

7 A. No, sir.

8 Q. Were you off because of the July 4th holiday?

9 A. I was.

10 Q. Did anything happen that you had to attend to any
11 matters regarding the defendant Abdo?

12 A. Yes. At roughly 10:00 o'clock in the morning on 4th
13 of July brigade staff duty called my work cell phone and
14 informed me that PFC Abdo --

15 MR. BOYD: Your Honor, I'm going to object as to hearsay.

16 MR. SCHNEIDER: I'll rephrase the question, Your Honor.

17 THE COURT: Objection sustained.

18 BY MR. SCHNEIDER:

19 Q. What was the general topic of the call that you
20 received?

21 MR. BOYD: Your Honor, I'm going to renew my objection.
22 It still calls for hearsay.

23 THE COURT: That would be overruled.

24 BY THE WITNESS:

25 A. About Abdo buying a weapon or attempting to purchase

1 a weapon.

2 BY MR. SCHNEIDER:

3 Q. And who did you receive that call from?

4 A. The staff duty NCO.

5 Q. And where were you when you received the call?

6 A. On my back deck in Clarksville, Tennessee.

7 Q. Was that the back deck of your home?

8 A. Yes.

9 Q. So after receiving that call from staff duty what, if
10 anything, did you do next?

11 A. I notified my first sergeant about it and then we
12 went to the company headquarters at Fort Campbell, Kentucky.

13 Q. And when you got to company headquarters did you meet
14 with anyone or discuss the matter with anyone?

15 A. I talked with again First Sergeant Morton and Staff
16 Sergeant Middlesworth about it.

17 Q. And why did you go into your office after receiving
18 that call?

19 A. Because it was my intent to speak to PFC Abdo about
20 the weapon.

21 Q. Was there anything that you were concerned about that
22 made you go into the office that day?

23 A. His belligerence with the staff when he attempted to
24 purchase the weapon.

25 Q. And what was your specific intent once you got to the

1 office and you spoke to PFC Abdo?

2 A. I wanted to counsel him, basically speak to him. I
3 was going to refer him to mental health and limit his liberty.

4 Q. And in terms of limiting his liberty, what did that
5 entail?

6 A. I was going to give him a -- he lived off post at the
7 time. So I was going to give him a room in the barracks and
8 restrict him to the room in the barracks, the dining facility,
9 the PX and his place of worship only under escort until the 6th
10 of July.

11 Q. So it would have been two days of restriction?

12 A. Yes, sir.

13 Q. And then what would happen after two days?

14 A. I would revisit -- I would have revisited the issue
15 and then changed it as I saw fit.

16 Q. Now, when you met with the first sergeant and the
17 staff sergeant, did you task them to do anything?

18 A. I don't know if I asked Sergeant Middlesworth to call
19 Abdo or if I did it first. I didn't task them anything
20 directly.

21 Q. Do you know if either the first sergeant or the staff
22 sergeant spoke to Abdo?

23 A. I know Sergeant Middlesworth did.

24 Q. Did there come a time when you spoke with PFC Abdo?

25 A. I did.

1 Q. And when was that?

2 A. Roughly 10:30, 11:00 o'clock.

3 Q. And is that in the morning?

4 A. Yes.

5 Q. And can you tell us what the substance of that phone
6 call was?

7 A. I told PFC Abdo that he needed to report to the
8 company headquarters and that I needed to talk to him.

9 Q. And what did he tell you, if anything?

10 A. He said he'd be there roughly at like 12:30 or
11 something.

12 Q. Okay. And in between that phone call at 10:30 in the
13 morning and the expected time of 12:30 in the afternoon, what,
14 if anything, did you do next?

15 A. I received a phone call from a lawyer -- it turned
16 out to be PFC Abdo's lawyer. I don't remember his name -- in
17 reference to what I was bringing him in for and I explained the
18 situation to him and he said that it was completely lawful and
19 that he'd call Abdo back and tell him to report.

20 Q. So based on having that phone call with Abdo's
21 attorney, did you expect any different outcome at 12:30 in the
22 afternoon?

23 A. I did not.

24 Q. So did you still expect that PFC Abdo would show up
25 as reported?

1 A. I did.

2 Q. And when he showed up, what was your plan of action
3 if he were to show up as directed?

4 MR. BOYD: Your Honor, I'm going to object as to unduly
5 repetitious.

6 THE COURT: Overruled.

7 MR. SCHNEIDER: I'll withdraw the question.

8 BY MR. SCHNEIDER:

9 Q. Did there come a time that you spoke to Abdo again
10 later that same day?

11 A. No.

12 Q. Did you attempt to speak to Abdo?

13 A. Yes.

14 Q. And how did you attempt that?

15 A. We started to try to call his -- his phone started
16 going directly to voicemail and then I went to his home
17 residence.

18 Q. At what point in the day did you go to his residence?

19 A. I don't remember. In the afternoon.

20 Q. Would that have been after 12:30?

21 A. Yes.

22 Q. So at 12:30 in the afternoon did Abdo ever show up?

23 A. No.

24 Q. And you said you went to his residence?

25 A. Yes.

1 Q. Did you speak with anyone at the residence?

2 A. Yes. I spoke to his roommate's last landlord.

3 Q. And was Abdo at the residence?

4 A. He was not.

5 Q. Did anything else happen that day in regards to PFC
6 Abdo?

7 A. No.

8 Q. Did you take any other action with regards to Abdo
9 not showing up as you directed him to?

10 A. I just started the AWOL paperwork. That's it.

11 MR. BOYD: Your Honor, I'm going to object. May we
12 approach?

13 THE COURT: Yes, sir.

14 (On-the-record bench conference, to wit:

15 MR. BOYD: Your Honor, we've got a motion in limine
16 regarding this and what the government's trying to do is go
17 into legal orders regarding AWOL as opposed to a layperson's
18 understanding.

19 MR. SCHNEIDER: Your Honor, the Court ruled yesterday that
20 we can go into the AWOL -- the fact that there was an AWOL
21 paperwork started and we had agreed not to discuss the fact
22 that there was a warrant. That was the only limitation on the
23 AWOL issue.

24 MR. BOYD: Your Honor, it was specifically represented to
25 the Court it was a layperson's understanding.

1 THE COURT: That's correct. You don't need to go into all
2 that detail.

3 MR. SCHNEIDER: Yes, sir.

4 MR. BOYD: Your Honor, just for the record I'd ask for a
5 mistrial at this time.

6 THE COURT: Overruled.

7 (End of bench conference.)

8 BY MR. SCHNEIDER:

9 Q. When was PFC Abdo next required to report for regular
10 duty work?

11 A. I don't remember the specific day. It was after --
12 it was a four day weekend. So it was directly following the
13 four day weekend.

14 Q. And did the defendant Abdo ever show up for his
15 regular duty work?

16 A. He did not.

17 MR. SCHNEIDER: I have nothing further, Your Honor. Pass
18 the witness.

19 MR. BOYD: No questions, Your Honor.

20 THE COURT: You may step down, sir.

21 MR. FRAZIER: Our next witness would be Jason Bo Campbell.

22 (The witness was sworn.)

23 DIRECT EXAMINATION

24 BY MR. FRAZIER:

25 Q. And would you please introduce yourself to the ladies

1 and gentlemen of the jury?

2 A. My name is Bo Jason Campbell.

3 Q. And where do you live, sir?

4 A. [REDACTED].

5 Q. And how long have you lived in [REDACTED]?

6 A. Almost three years.

7 Q. Back in July of last year were you living there?

8 A. Yes, sir.

9 Q. And were you working at a place in [REDACTED]?

10 A. Yes. I was.

11 Q. Where were you employed?

12 A. [REDACTED].

13 Q. Okay. And how long had you worked at [REDACTED]

14 [REDACTED] in [REDACTED]?

15 A. For two and a half years.

16 Q. Okay. I want to direct your attention to July the
17 4th of last year. Do you remember that day?

18 A. Yes. I do.

19 Q. Were you -- tell us what you were doing on that day
20 in relation to your business [REDACTED]. Were you
21 working that day?

22 A. No, sir. We were actually closed that day for the
23 4th.

24 Q. All right. Did you happen to be in the area where
25 the [REDACTED] is located at?

1 A. I was. I was out getting lunch and driving by the
2 truck wash.

3 Q. Did you notice anything unusual as you were driving
4 by the truck wash?

5 A. I did.

6 Q. About what time of day was this?

7 A. It was around lunch, 12:00, 12:30, somewhere around
8 there.

9 Q. All right. What did you notice unusual?

10 A. Well, there was a car parked behind the truck wash
11 and a gentleman going back and forth from the side of the
12 building from the Dumpster back to the back of the building
13 and -- which was odd because like I said we were closed.

14 Q. Okay.

15 A. I was curious to find out what he was doing there.

16 Q. All right. And how was the gentleman moving between
17 the vehicle and the Dumpster?

18 A. He was -- I wouldn't say he was running but he was --
19 he was moving quickly. He was in a hurry.

20 Q. Okay. Did you see him do anything at the Dumpster?

21 A. Yes, sir. He was -- he was throwing something away.
22 I didn't know what at the time.

23 Q. Okay. Did he make more than one trip back and forth?

24 A. He did.

25 Q. How many trips do you recall?

1 A. I saw two trips.

2 Q. All right. So -- and what type of vehicle was the
3 gentleman driving?

4 A. It was a blue Cadillac.

5 Q. All right. And where was the vehicle parked in
6 relation to the Dumpster?

7 A. He was actually not parked close to the Dumpster. He
8 was parked behind the truck wash.

9 Q. Okay. And behind the truck wash. Where would that
10 be in relation to the main road that runs in front of the truck
11 wash? That doesn't make sense. Let me rephrase that question.
12 I'm sorry.

13 Where did the -- was the vehicle parked in relation to the
14 main roadway? In other words could you see his vehicle from --

15 A. Coming -- as I was leaving -- I was coming from
16 McDonald's and the red light I was sitting at I could see
17 across a field to the -- I could see the entire truck wash and
18 his car was parked behind the building. So he was running down
19 the side of the building --

20 Q. Okay.

21 A. -- from his car to the Dumpster.

22 Q. So what did you do when you saw that?

23 A. Well, I -- like I said I was curious to know what he
24 was doing there as we were closed and I pulled in to find out
25 who he was, you know, what he was doing.

1 Q. Okay. And did you see him when you pulled in?

2 A. I did.

3 Q. Where did you see him?

4 A. As I was pulling into the truck wash, he was pulling
5 out.

6 Q. And where did he go?

7 A. He went -- he pulled up to the Waffle House which is
8 directly in front of our truck wash.

9 Q. Okay. It's across the main road there?

10 A. Actually it's not across the road. It's right --
11 it's across a small field.

12 Q. Is it on the same side of the road then?

13 A. Yes, sir. Yes, sir.

14 Q. All right. And did you make eye contact with the
15 person?

16 A. I did.

17 Q. At what point was that that you made eye contact with
18 him?

19 A. As I was pulling in and he was pulling out.

20 Q. All right. Show you what's been previously admitted
21 as Government's Exhibit No. 153A. Do you recognize that
22 photograph?

23 A. I do.

24 Q. And what do you recognize that photo as?

25 A. That's the gentleman that was at the truck wash.

1 Q. The person running back and forth between the car
2 putting things in your Dumpster?

3 A. Yes, sir.

4 Q. Okay. Now, when you saw the vehicle go over to the
5 Waffle House, what did you -- what else did you see when the
6 vehicle got there?

7 A. He got out of the vehicle and he went into the Waffle
8 House.

9 Q. Did he have anything with him when he went inside?

10 A. He did. He had a gray or a dark colored backpack as
11 he went into the Waffle House.

12 Q. Okay. So what did you do when you got to the
13 Dumpster?

14 A. I was curious to know what he was doing there so I
15 looked to see what he was throwing away.

16 Q. Okay. And did you have to go into the Dumpster to
17 see?

18 A. I didn't go into the Dumpster myself but I opened it
19 up and the objects he threw away were right there on top.

20 Q. Had the Dumpster been recently emptied to your
21 knowledge?

22 A. It had been emptied two days before.

23 Q. And in addition to the objects that was in it, was
24 there anything else?

25 A. There was a small amount of trash but not -- not very

1 much.

2 Q. Okay. Did you recognize the trash as trash of your
3 business?

4 A. Yes, sir.

5 Q. Okay. I'm -- sir, I want to show you some -- and
6 when you looked inside the Dumpster were there several objects
7 that you recognized?

8 A. Yes, sir.

9 Q. Okay. I want to show you first Government's Exhibit
10 No. 4 and No. 5. Do you recognize these?

11 A. I do.

12 Q. What are they?

13 A. They're two brand new pairs of gloves that were in
14 the Dumpster.

15 Q. All right. Government's Exhibit No. 6. Do you
16 recognize this?

17 A. I do.

18 Q. And what is it?

19 A. It is a shovel that was also in the Dumpster.

20 Q. Was it wrapped in the manner that it was --

21 A. It was -- yes, sir.

22 Q. Except for it being opened; is that right?

23 A. Right.

24 Q. Okay. Did it appear to you to be brand new?

25 A. Yes, sir.

1 Q. Government's Exhibit No. 7. Do you recognize this?

2 A. I do.

3 Q. And what is it?

4 A. I thought it was a body bag.

5 Q. All right. Was it in the Dumpster as well?

6 A. It was.

7 Q. Government's Exhibit No. 8. Do you recognize this?

8 A. I do.

9 Q. Where was it found?

10 A. It was also in the Dumpster.

11 Q. Government's Exhibit No. 9. Do you recognize this?

12 A. Yes.

13 Q. What is it?

14 A. It's a hoodie.

15 Q. And where did you --

16 A. It was also in the Dumpster. Yes.

17 Q. Government's Exhibit Nos. 11 and 12. Do you
18 recognize these?

19 A. I do.

20 Q. And what are they?

21 A. They are bags -- I believe they're sheets, but as --
22 they were in the Dumpster as well.

23 Q. Packaged in the way they are now?

24 A. Right. Yes, sir.

25 Q. Government's Exhibit No. 13. Do you recognize this?

1 A. Yes.

2 Q. What is this? Or what did you think it was at the
3 time?

4 A. Another body bag is what I was assuming it was at the
5 time.

6 Q. Where did you find it?

7 A. It was in the Dumpster as well.

8 Q. Government's Exhibit No. 16, two plastic bags. Do
9 you recognize those?

10 A. Yes, sir.

11 Q. And what -- where did you recognize these from?

12 A. There were two jugs of bleach that were inside of
13 those bags.

14 Q. Show you first what's been marked as Government's
15 Exhibit No. 17. Do you recognize that?

16 A. Yes, sir.

17 Q. What is it?

18 A. That's the bleach that was in there.

19 Q. Okay. Except was it --

20 A. Well, that plastic was not on it. No, sir.

21 Q. It was just the bottle of bleach?

22 A. Yes.

23 Q. Contained inside one of the black plastic bags marked
24 Government's --

25 A. Yes, sir.

1 Q. Government's Exhibit No. 18. Do you recognize that?

2 A. Yes.

3 Q. What is that?

4 A. That is the other jug of bleach.

5 Q. Other than the packaging?

6 A. Yes.

7 Q. And finally Government's Exhibit No. 19. Do you
8 recognize that?

9 A. I do.

10 Q. And what is that?

11 A. That is a digital camera that was also in the
12 Dumpster.

13 Q. All right. After you saw all these items, what did
14 you do?

15 A. Well, I called the owner of the truck wash to find
16 out what I should do because the items that I found were a
17 little curious. I mean, it didn't look good. I mean, I was a
18 little worried that something may be wrong. I wasn't sure what
19 he was doing so I called the owner to find out what I should
20 do.

21 Q. And after you called the owner, did somebody appear
22 at the scene?

23 A. Yes, sir.

24 Q. Who was that?

25 A. One of the owners showed up and then he called the

1 police department.

2 Q. And did the police department arrive?

3 A. Yes.

4 Q. And who was the officer that arrived there at the
5 scene?

6 A. Officer Lynch.

7 Q. And did you see the vehicle again -- during your time
8 there -- you stayed there until Officer Lynch arrived, correct?

9 A. Yes. I did.

10 Q. And did you stay with these items you've just
11 described?

12 A. I did.

13 Q. And did you see what happened to the person who went
14 inside the Waffle House after -- the person you identified as
15 Mr. Abdo went inside?

16 A. After he went into the Waffle House, that was the
17 last I saw him.

18 Q. Okay. Now I want to show you what's been marked as
19 Government's Exhibit No. 15 some photos. First of all can you
20 see Government's Exhibit No. 15A? Hold on just a second and
21 I'll -- can you see Government's Exhibit No. 15A?

22 A. Yes.

23 Q. Do you recognize what that is?

24 A. That is the truck wash that I was working for.

25 Q. B. Do you recognize that photograph?

1 A. That is the Dumpster where I found the items.

2 Q. C. Do you recognize that photograph?

3 A. Yes, sir.

4 Q. And what --

5 A. That's the same Dumpster.

6 Q. D. Do you recognize that photograph?

7 A. Yes, sir.

8 Q. And then I'm going to show you the photographs marked

9 Government's Exhibit No. E through P rather quickly and then

10 I'll ask you a question after you've seen them. Do you see E?

11 A. Yes, sir.

12 Q. You see F?

13 A. Yes, sir.

14 Q. G?

15 A. Yes, sir.

16 Q. H?

17 A. Yes, sir.

18 Q. I?

19 A. Yes, sir.

20 Q. J?

21 A. Yes, sir.

22 Q. K?

23 A. Yes, sir.

24 Q. L?

25 A. Yes, sir.

1 Q. That's L. I'll turn it another way.

2 A. Right.

3 Q. M?

4 A. Yes, sir.

5 Q. N?

6 A. Yes, sir.

7 Q. O?

8 A. Yes.

9 Q. And P?

10 A. Yes, sir.

11 Q. Do all the photographs I've shown you in Government's
12 Exhibit No. 15A through P, do they fairly depict the scene as
13 it appeared there at the truck wash and at the Dumpster both
14 before and during and after the time you removed certain items
15 from the Dumpster?

16 A. Yes.

17 Q. And you did in fact go into the Dumpster after you
18 opened it to retrieve these items?

19 A. I did.

20 MR. FRAZIER: All right. We'll offer Government's Exhibit
21 No. 15 into evidence at this time.

22 MR. BOYD: No objection.

23 THE COURT: 15 is admitted.

24 (Exhibit(s) admitted: G15)

25 BY MR. FRAZIER:

1 Q. Now, this is the -- is this -- describe what
2 Government's 15A shows.

3 A. That is the front of the truck wash.

4 Q. Is this the part that would face the main
5 thoroughfare there?

6 A. Yes, sir.

7 Q. And what is the name of the roadway that runs in
8 front of Turtle's Truck Wash?

9 A. It is 41A.

10 Q. Is it more commonly called something there local?

11 A. Fort Campbell Boulevard.

12 Q. B. Tell the jury what that is.

13 A. That is the Dumpster that I found the items in.

14 Q. Now, was it open when you approached it?

15 A. It was closed when I -- when I got there. It had
16 been closed back.

17 Q. Photograph C. What is that a picture of?

18 A. That is the Dumpster as well.

19 Q. And D. What are we looking at in this photograph?

20 A. The same Dumpster.

21 Q. What else is pictured around the Dumpster?

22 A. The items that I pulled out of the Dumpster.

23 Q. Okay. That would be the bleach over here?

24 A. Yes, sir.

25 Q. What you've described as a body bag here?

1 A. Correct.

2 Q. And the shovel back here?

3 A. Yes. It is.

4 Q. E. Is that a close-up of some of those same items?

5 A. Yes, sir.

6 Q. And what's -- in addition now in Photograph No. F

7 what are we looking at that's in this area here?

8 A. Those are the gloves and the two packages of sheets.

9 Q. Photograph G?

10 A. That is the bleach and the turtle -- a neck cover.

11 I'm not sure what it's called.

12 Q. All right. Photograph H?

13 A. That is the...

14 Q. And I are close-ups of the gloves and sheets again?

15 A. Yes. They are.

16 Q. Same with J?

17 A. Yes.

18 Q. Photograph No. K. What is this protruding from the

19 garbage bag?

20 A. That is the -- what I thought was another body bag.

21 Q. Government's Exhibit 13?

22 A. Yes, sir.

23 Q. And was it wrapped up in this trash bag as the way

24 that it's depicted in this photo?

25 A. Yes, sir.

1 Q. Except was it completely closed?

2 A. It was -- no, sir.

3 Q. Was it open or closed?

4 A. It was -- we tore it open to see what was in it.

5 Q. When you say we, you waited until --

6 A. Officer Lynch. Yes, sir.

7 Q. Okay. L. What is that a picture of?

8 A. That is the shovel.

9 Q. And I'm going to skip M and go to N. What is that a
10 picture of?

11 A. That is the camera -- digital camera that was in
12 there.

13 Q. Okay. And O and P are just basically overviews of
14 what we've already seen before, correct?

15 A. Yes.

16 MR. FRAZIER: All right. We'll pass the witness, Your
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. BOYD:

20 Q. You told the police that you saw someone by the
21 Dumpster, correct?

22 A. Actually he was running -- going -- I didn't see him
23 just by the Dumpster. He was going from the back of the
24 building up to the Dumpster and back and forth.

25 Q. Okay. You didn't see anything going into the

1 Dumpster?

2 A. Yes, sir. He was carrying items back and forth to
3 the Dumpster.

4 Q. But you didn't tell that to the police, did you?

5 A. Yes.

6 Q. You did?

7 A. Yes.

8 Q. Isn't it true the only thing you told the police was
9 that you noted an individual near the Dumpster at the truck
10 wash when no one should have been on the premises?

11 A. No, sir.

12 Q. And at no point did he go into the Waffle House, did
13 he?

14 A. Yes. I saw him go into the Waffle House.

15 MR. BOYD: Nothing further.

16 MR. FRAZIER: No further questions, Your Honor.

17 THE COURT: You may step down, sir.

18 MR. FRAZIER: Government's next witness will be Victor
19 Lynch.

20 THE COURT: May this witness also be excused?

21 MR. FRAZIER: Yes, Your Honor. This witness may be
22 excused.

23 MR. BOYD: Yes, Your Honor.

24 THE COURT: You may be excused, sir.

25 (The witness was sworn.)

1 DIRECT EXAMINATION

2 BY MR. FRAZIER:

3 Q. And would you please introduce yourself to the ladies
4 and gentlemen of the jury?

5 A. My name is Victor Lynch. I'm a sergeant with the Oak
6 Grove Police Department, Oak Grove, Kentucky just outside of
7 Fort Campbell.

8 Q. And how long have you been employed with the Oak
9 Grove Police Department?

10 A. I've been employed with the Oak Grove Police
11 Department since September of 2005.

12 Q. And what prior law enforcement experience do you
13 have?

14 A. I spent approximately about two years with the
15 Christian County Sheriff's Department.

16 Q. All right. And were you in the military prior to
17 that?

18 A. I spent 25 and a half years in the military retired.

19 Q. And what did you do for the U.S. military? What
20 position were you in?

21 A. I was in the aviation maintenance.

22 Q. And I want to ask you if back on July the 4th, 2011
23 you were working at the Oak Grove Police Department?

24 A. That's correct.

25 Q. And on that date did you receive a call to go to

1 Turtle's Truck Wash on Fort Campbell Boulevard?

2 A. Yes. I did.

3 Q. About what time of day was that?

4 A. It was approximately 12:15, 12:40, somewhere around
5 there.

6 Q. And what was the purpose of your dispatch to that
7 location? What did you expect to find when you got there?

8 A. I was dispatched because one of the owners had found
9 some property that didn't belong to the truck wash in the
10 Dumpster there.

11 Q. All right. And when you arrived at the location,
12 what did you -- who did you find there and what did you see?

13 A. When I arrived to the truck stop I found I believe it
14 was Mr. Cullen and Mr. Campbell and several items that was
15 removed from the Dumpster.

16 Q. Okay. Now, you've previously had a chance to look at
17 the photographs marked Government's Exhibit No. 15A through P,
18 correct?

19 A. That's correct.

20 Q. Do these fairly and accurately depict the scene as it
21 appeared back on that date when you arrived?

22 A. That is correct.

23 Q. And in fact you're the person who made these
24 photographs; is that --

25 A. That's absolutely correct.

1 Q. Okay. I want to show you some exhibits and basically
2 of the exhibits that were there that were removed from the
3 Dumpster, Mr. Campbell had removed -- had Mr. Campbell already
4 removed some items by the time you got there or did you arrive
5 and then some items were removed?

6 A. He'd already removed some of the items. That's
7 correct.

8 Q. Okay. And so did you basically -- once you
9 determined the nature of these items, did you take custody of
10 them?

11 A. Yes. I did.

12 Q. Okay. I want to show you what's been marked for
13 identification as Government's Exhibit Nos. 4 and No. 5. Do
14 you recognize these?

15 A. Yes. I do.

16 Q. And are these -- and all these items I'm about to
17 show you did you take custody of?

18 A. Yes. I did.

19 Q. Government's Exhibit No. 6. Do you see that?

20 A. Yes. I do.

21 Q. Government's Exhibit No. 7. Did you take custody of
22 that?

23 A. Yes. I did.

24 Q. Government's Exhibit Nos. 8 and No. 9. Did you take
25 custody of those?

1 A. Yes. I did.

2 Q. Government's Exhibit No. 11 and 12?

3 A. Yes. I did.

4 Q. Did you take custody of those?

5 A. Yes. I did.

6 Q. Government's Exhibit No. 13. Did you take custody of
7 that?

8 A. Yes. I did.

9 Q. Government's Exhibit No. 16 which is two trash bags.
10 Did you take custody of that as well?

11 A. Yes. I did.

12 Q. And were those trash bags wrapped around these items
13 Government's Exhibit Nos. 17 and No. 18?

14 A. Yes. They were.

15 Q. Did you take custody of those as well?

16 A. Yes. I did.

17 MR. FRAZIER: At this time, Your Honor, we move to
18 introduce into evidence Government's Exhibit Nos. 4, 5, 6, 7
19 and 8, 9, 11 and 12, 13, 16 and 17 and 18. Move to introduce
20 those into evidence.

21 MR. BOYD: No objection, Your Honor.

22 THE COURT: They're admitted.

23 (Government's Exhibit(s) admitted: 4 thru 9, 11, 12, 13,
24 (16 thru 18

25 BY MR. FRAZIER:

1 Q. And likewise did you take custody of Government's
2 Exhibit No. 19?

3 A. Yes. I did.

4 Q. Okay. In addition did you yourself recover -- I'm
5 going to show you Government's Exhibit No. 10. Do you
6 recognize that?

7 A. Yes. I do.

8 Q. And what is that?

9 A. That is a cord attaches to the camera USB cord.

10 Q. Okay. And did you take -- locate this item yourself?

11 A. Yes. I did.

12 Q. Where did you locate it?

13 A. That was in the Dumpster.

14 MR. FRAZIER: Okay. We'll move Government's Exhibit No.
15 10 and No. 19 into evidence at this time.

16 MR. BOYD: No objection.

17 THE COURT: They'll be admitted.

18 (Exhibit(s) admitted: G10, G19)

19 BY MR. FRAZIER:

20 Q. Officer Lynch, when you saw all these items in the
21 Dumpster and took custody of them, what was going through your
22 mind?

23 A. My heart was racing. I was seriously thinking that
24 somebody was in danger.

25 Q. Okay. Had you already been told about the

1 circumstances of the person at the Dumpster and that the
2 vehicle had been moved to the Waffle House?

3 A. Yes. I was.

4 Q. Okay. So what actions did you take after -- or
5 during the time you either took custody of the exhibits or what
6 was the next steps that you took?

7 A. Located the vehicle over at -- that was in question
8 that was described to me that's leaving the scene and was next
9 door to the Waffle House business. Went over and identified
10 the vehicle.

11 Q. Okay. Did you find the person associated with the
12 vehicle that you'd been told about?

13 A. No, sir.

14 Q. Was anyone either in the business or around the
15 business that either matched the description or anything of
16 that nature?

17 A. No, sir.

18 Q. Okay. Now, did you run the tags on the vehicle?

19 A. Yes. I did.

20 Q. When you say run the tags, what does that mean?

21 A. I got on my radio and called the operations
22 dispatcher that we have and gave her the tag numbers that was
23 on the vehicle.

24 Q. And did you find who the vehicle was registered to?

25 A. The vehicle came back registered to a Mr. Abdo.

1 Q. Mr. Naser Jason Abdo?

2 A. That's correct.

3 Q. Likewise were there some other identifying marks on
4 the vehicle that you had ran to verify this ownership?

5 A. On the vehicle there is a Department of Defense tag
6 that's on the windshield.

7 Q. And do you have the ability to check that as well?

8 A. Once we contacted the provost marshal at Fort
9 Campbell, Kentucky.

10 Q. Okay. And who did you find out that tag was
11 registered to?

12 A. To Mr. Abdo.

13 Q. Okay. Now, what steps did you take before actually
14 doing anything inside the vehicle?

15 A. We took a good look inside the vehicle and based on
16 the items that were found at the truck stop that came out of --
17 that we believed belonged with the vehicle I contacted the
18 County attorney who's -- we deal with on a daily basis and
19 advised them of the situation and got permission to enter the
20 vehicle.

21 Q. Okay. What was it -- the vehicle at this point was
22 abandoned?

23 A. That's correct.

24 Q. What were you hoping to -- not hoping to find but
25 what were you looking for? What were you investigating at this

1 point?

2 A. Wanted to make sure that there was nobody in the car
3 that was hurt or in the vehicle itself.

4 Q. Okay. And you -- did you look in the vehicle then
5 after that?

6 A. Yes. I did.

7 Q. And what did you find?

8 A. We found several items in the vehicle but we didn't
9 find anybody in the vehicle.

10 Q. No bodies or persons injured or anything of that
11 nature?

12 A. That's correct.

13 Q. All right. I'm going to show you -- you've
14 previously had a chance to see what's been marked as
15 Government's Exhibit No. 42. Can you see that on your screen
16 there?

17 A. Yes, sir.

18 Q. And that's Government's Exhibits 42A through N some
19 photographs; is that correct?

20 A. That's correct.

21 Q. Does Government's Exhibits 42A through N fairly and
22 accurately depict the scene at the Waffle House where this
23 vehicle that you looked into was located at?

24 A. That is correct.

25 Q. And in fact the photographs, were they made by you?

1 A. That is absolutely correct.

2 MR. FRAZIER: We'll offer Government's Exhibit No. 42A
3 through N into evidence at this time.

4 MR. BOYD: No objection, Your Honor.

5 THE COURT: The exhibits are admitted.

6 (Exhibit(s) admitted: G42A thru G42N)

7 BY MR. FRAZIER:

8 Q. 42A. If you can explain to the jury what that's a
9 picture of.

10 A. That's a picture of the vehicle that was parked at
11 the Waffle House and abandoned.

12 Q. The one that was registered to Mr. Abdo?

13 A. That is correct.

14 Q. B. Is that just another angle of the same picture?

15 A. That's correct.

16 Q. Same angle of the view of the automobile is what I
17 meant to say. Sorry.

18 C. What is that photo of?

19 A. That's going to be a photograph of the rear of the
20 vehicle including the license plates.

21 Q. D. What is that a picture of?

22 A. That's a picture of the Department of Defense decal
23 that goes on the windshield of the vehicle.

24 Q. This is the same decal that you indicated you ran
25 with the provost marshal?

1 A. That is correct.

2 Q. Photograph E. What is that a picture of?

3 A. That's a photograph of the interior front portion of
4 the vehicle taken from the passenger side.

5 Q. F. Can you tell the jury what that's a picture of?

6 A. That's a photograph of the front passenger -- taken
7 from the front passenger side of the vehicle.

8 Q. Okay. In particular can you tell the jury what this
9 item is here that's seated in the passenger seat?

10 A. That item is a cattle prod battery operated
11 electrical device.

12 Q. Photo G. Can you tell us what that's a photograph
13 of?

14 A. That's a photograph of a military meal card that's
15 with Mr. Abdo's name on it.

16 Q. H. What is that a picture of?

17 A. H is a box of handcuffs.

18 Q. I. Can you tell us what that's a photo of?

19 A. I is a photograph of the front passenger front area
20 of the vehicle taken from the drivers side.

21 Q. Okay. What is this in the drivers seat area right
22 there that I just circled on the photograph?

23 A. Those are two C cell batteries.

24 Q. Does the cattle prod that I showed you a picture of
25 earlier do you know what type of batteries it takes?

1 A. C cell.

2 Q. Photo J. What is that a picture of?

3 A. This is a picture of the passenger side of the -- I
4 believe the vehicle -- of the vehicle in the front.

5 Q. All right. What is in this photograph in this bag
6 right here? Can you tell from looking at it?

7 A. No.

8 Q. Let me zoom in a little bit.

9 A. That's going to be another box. A handcuff box.

10 Q. Okay. Photo K. What is that a picture of?

11 A. Handcuff box.

12 Q. Where's it located at in the vehicle?

13 A. That's in the front of the floor of the vehicle.

14 Q. Photograph L. Do you recognize that?

15 A. That's going to be the rear seat of the vehicle.

16 Q. Photograph M. What is that a photo of?

17 A. This is going to be in the trunk compartment of the
18 vehicle.

19 Q. Photograph N. What is that a photo of?

20 A. This is also the trunk compartment of the vehicle.

21 Q. Inside the vehicle -- inside the photographs that we
22 saw in the vehicle were several items. I'm going to show you
23 some items, ask you if you recognize them. First Government's
24 Exhibit No. 34. Do you recognize this item?

25 A. That's right. These are handcuff boxes.

1 Q. How many of them in the exhibit?

2 A. Three.

3 Q. Government's Exhibit No. 35. Do you recognize this?

4 A. Yes. I do.

5 Q. What is this?

6 A. That's going to be the cattle prod that was in the

7 front seat of the vehicle.

8 Q. Government's Exhibit No. 36. Can you identify this?

9 A. Yes. I can.

10 Q. What is it?

11 A. Those are covers for binoculars.

12 Q. Do you remember where these were in the vehicle?

13 A. Those were in the front seat of the vehicle.

14 Q. Government's Exhibit No. 37. Do you recognize this?

15 A. Yes, sir. Those are the keys.

16 Q. Where were they found?

17 A. They were in the front seat of the vehicle.

18 Q. Government's Exhibit No. 38. Do you recognize this?

19 A. That's a hat. I believe that was in the trunk of the

20 vehicle.

21 Q. Does it have the name Abdo on the back?

22 A. That's correct.

23 Q. Government's Exhibit No. 39. Do you recognize this?

24 A. Yes, sir. Those are packages of trash bags.

25 Q. Okay. Do you recognize anything unusual --

1 noteworthy about these particular trash bags?

2 A. They were in the trunk of the vehicle rolled up.

3 Q. Were they similar to any other trash bags?

4 A. They were similar to all the trash bags the other
5 items were in.

6 Q. Including Government's Exhibit No. 6, the shovel?

7 A. That's correct.

8 Q. And Government's Exhibit Nos. 17 and 18, the bleach?

9 A. That is correct.

10 Q. Government's Exhibit No. 7. Can you see that from
11 where you sit?

12 A. Yes, sir.

13 Q. What is it?

14 A. It's a body bag carrier.

15 Q. And Government's Exhibit No. 13. What is that?

16 A. It's body bags.

17 Q. What are these used for if you know?

18 A. They're used to carry people that are deceased.

19 Q. So after you looked inside the vehicle what did you
20 do at that point?

21 A. After we checked the vehicle and realized that there
22 was nobody in the vehicle or anybody harmed in the vehicle, we
23 secured the -- closed the vehicle and stopped going through the
24 vehicle at that time.

25 Q. All right. And then what did you do after that?

1 A. I contacted -- at that point in time I contacted my
2 supervisor who in turn contacted the Fort Campbell CID and also
3 the FBI.

4 Q. All right. Was that because of the -- why was that?
5 Why was CID and FBI contacted?

6 A. The CID was contacted because Mr. Abdo was also in
7 the military and they contacted the FBI based on the items that
8 we found.

9 Q. All right. And was that because of the reasons you
10 stated earlier about what these items were used for?

11 A. That's correct.

12 Q. Or could be used for?

13 A. That's correct.

14 Q. All right. And what about the vehicle itself? Did
15 it stay at the Waffle House parking lot or what happened to the
16 vehicle once you were through with it?

17 A. The proprietor of the Waffle House asked what we were
18 going to do with the vehicle at which point in time we told him
19 it was on private property and they had the choice of take and
20 have it removed at which time they did.

21 Q. All right. So it was moved to an impound lot?

22 A. Correct.

23 Q. Okay. And before a vehicle like that is impounded,
24 what's done with the vehicle?

25 A. It's inventoried.

1 Q. And who inventoried this particular vehicle?

2 A. At the time was Captain Alter.

3 Q. Okay. And what was done -- after law enforcement was
4 contacted, were steps taken to look for Mr. Abdo in the area?

5 A. That's correct. After Mr. Abdo was not located in
6 the area, an attempt to locate bulletin was placed to locate
7 Mr. Abdo.

8 Q. Okay. And what type of steps did your police
9 department take to look for him in the area?

10 A. We checked the -- there's several truck stops in the
11 area, several hotels and fast food restaurants and gas stations
12 and we checked each one to include vehicles and parking lots.

13 Q. Okay. Did you find Mr. Abdo at all?

14 A. There was negative contact.

15 Q. Okay. And did you have some -- did you have some way
16 of verifying that he in fact left the Waffle House?

17 A. There was a video from the Waffle House that showed a
18 male subject walking from the vehicles around the back out the
19 Waffle House towards the US 41A.

20 Q. And although you did not see Mr. Abdo yourself, did
21 that person that you saw in the video resemble anything that
22 you had inside of Mr. Abdo's vehicle?

23 A. Yes. It did.

24 Q. And what was that?

25 A. There was a photograph of Mr. Abdo in the trunk of

1 the vehicle.

2 Q. Okay. And that was the person depicted on the video?

3 A. That's correct.

4 Q. All right. In the paperwork that was in the trunk,
5 you didn't actually go through any of that paperwork yourself,
6 correct?

7 A. No. I did not.

8 Q. That would be the responsibility of Captain Alter who
9 did the inventory?

10 A. Yes. He did.

11 MR. FRAZIER: Okay.

12 We'll pass the witness at this time.

13 CROSS-EXAMINATION

14 BY MR. BOYD:

15 Q. Good morning, sir. I'm Zachary Boyd.

16 A. Good morning.

17 Q. Did you ever file charges against Mr. Abdo?

18 A. No, sir.

19 Q. Was anything you located illegal?

20 A. No, sir.

21 MR. BOYD: Nothing further.

22 MR. FRAZIER: No further questions, Your Honor.

23 THE COURT: You may step down, sir.

24 MR. FRAZIER: And may this witness be excused?

25 THE COURT: Yes, sir.

1 MR. FRAZIER: Next witness will be Jozef Alter.

2 THE COURT: Mr. Boyd, you have no objection to him being
3 excused, I assume?

4 MR. BOYD: No, Your Honor.

5 (The witness was sworn.)

6 DIRECT EXAMINATION

7 BY MR. FRAZIER:

8 Q. And would you please introduce yourself to the ladies
9 and gentlemen of the jury?

10 A. Jozef A. Alter. I'm the captain in charge of patrol
11 for Oak Grove Police Department.

12 Q. And that's in Oak Grove, Kentucky, correct?

13 A. Yes, sir.

14 Q. And how long have you been employed there?

15 A. Since 2001.

16 Q. And what did you do prior to working as a police
17 officer there?

18 A. I was in the U.S. Army.

19 Q. Okay. How long were you in the U.S. Army?

20 A. 23 years.

21 Q. And what did you do with the U.S. Army?

22 A. I was with special forces.

23 Q. Okay. I want to direct your attention to the date of
24 July 4th of last year. On that date were you working at the
25 Oak Grove Police Department?

1 A. I was at the police department but I was actually off
2 that day.

3 Q. Okay. What were you doing on that day at the police
4 department?

5 A. I was actually cooking out for patrol officers for
6 the -- feeding them lunch and dinner.

7 Q. That's for the 4th of July activities?

8 A. Yes, sir.

9 Q. Okay. Did you receive a call at some time that day
10 from another officer causing you to have to take some action?

11 A. I did. Normally when there's something bad or good
12 going on in the city they call me and notify me what's going on
13 and the officer said -- called me, said you need to come out
14 here right away.

15 Q. And where were you called to go?

16 A. To the Waffle House.

17 Q. Okay. Is that the Waffle House there on Fort
18 Campbell, Kentucky Boulevard?

19 A. Yes, sir. It's on 41A Fort Campbell Boulevard.

20 Q. Okay. And when you got to the Waffle House, what did
21 you see?

22 A. Obviously patrol officers were there. Couple of CID
23 agents were there and a blue Cadillac was parked in the parking
24 lot of Waffle House.

25 Q. Now, had you already been briefed by other officers

1 concerning something that had been found in a Dumpster next
2 door at the Turtle's Truck Wash?

3 A. That was the first thing they briefed me on is the
4 events that occurred earlier prior to me showing up.

5 Q. Did you have a chance to see the items that were
6 actually --

7 A. No. I did not.

8 Q. -- from the Dumpster?

9 But you were told about what they were?

10 A. I was told what they were.

11 Q. Okay. So after you got to the Waffle House and had
12 your meeting, briefing about what had happened, what did you
13 do?

14 A. We immediately called the County attorney, let them
15 know what we had, that we had possibly evidence of a crime or a
16 crime that's about to happen. And we proceeded to check the
17 rest of the vehicle to see if there was any other -- if there
18 was any other crimes that were committed or about to be
19 committed.

20 Q. And did you find any bodies or anything of that
21 nature in the vehicle?

22 A. We did not find any human bodies or any human
23 evidence inside the vehicle.

24 Q. Okay. So after that -- after you found there was
25 nobody in the vehicle, what did you do?

1 A. We obviously looked in the vehicle. We found some
2 items that were in plain view. Cattle prod in the front seat,
3 some loose batteries, some other loose items that -- not normal
4 for anybody that would -- that would have inside of a vehicle.

5 Q. Okay. So what did you do at that point when you saw
6 those things?

7 A. We spoke to the CID agents who were already on the
8 scene. CID agents told us that --

9 Q. Let's not go into what they said.

10 A. Okay.

11 Q. Just what happened? What was the steps that were
12 taken?

13 A. Again we called the County attorney. The County
14 attorney said --

15 MR. BOYD: Your Honor, I'm going to object as to hearsay.
16 BY MR. FRAZIER:

17 Q. Without going into what the County attorney said,
18 what did you do after that phone call? What did you do?

19 A. Well, the manager of the store told us he wanted that
20 vehicle off of his property because it was blocking --

21 MR. BOYD: Your Honor, I'm going to again say now the
22 witness is still testifying to hearsay. So I'd object.

23 MR. FRAZIER: That's not hearsay.

24 THE COURT: Overrule the objection.

25 BY MR. FRAZIER:

1 Q. So what did you do?

2 A. The manager said he wanted the vehicle off the
3 property it was blocking.

4 MR. BOYD: Your Honor, I renew my hearsay objection.

5 THE COURT: It's overruled again. Same objection, same
6 ruling.

7 BY THE WITNESS:

8 A. So I -- we called a towing truck on the request of
9 the owners of the business and had the vehicle towed. It was
10 blocking their business, their Dumpster and their oil
11 dispensary.

12 BY MR. FRAZIER:

13 Q. Okay. And before that's done, there's some steps you
14 have to take as part of your department policy?

15 A. Yes, sir. I have to inventory the vehicle, make sure
16 we account for all the items that are in the vehicle.

17 Q. All right. I'm going to show you what's previously
18 been introduced into evidence as Government's Exhibit No. 42.
19 These are Photographs A through N. Have you had a chance to
20 see these previously before coming into court?

21 A. Yes, sir.

22 Q. And are these photographs basically of the vehicle
23 that was inventoried and the items that were in the vehicle?

24 A. That's correct.

25 Q. Now, during your inventory did you notice -- I want

1 to show you some items. I'm just going to show you these items
2 and ask you if these are items that you noted and made a note
3 of in your inventory of the vehicle there at the scene before
4 it was impounded. Okay?

5 A. Yes, sir.

6 Q. First show you Government's Exhibit No. 20. Do you
7 recognize that?

8 A. I do. It looks like the passport that was --

9 Q. And Government's Exhibit No. 21. Do you recognize
10 what that is?

11 A. Yes, sir. It was a social security card that was
12 located with -- it was in the vicinity of the passport.

13 Q. Government's Exhibit No. 22. Do you recognize that?

14 A. Yes, sir. That was the marriage certificate that was
15 also located at the same location.

16 Q. 23. Do you recognize that?

17 A. Yes, sir. I do. Birth certificate.

18 Q. 25. Do you recognize that?

19 A. Yes, sir. It was school transcripts that were also
20 located in the same box.

21 Q. 26. Do you recognize that item? Let me zoom out a
22 little bit. Do you recognize that item?

23 A. Yes, sir. That was also located inside the box.

24 Q. And when you say the box, you're talking about
25 something inside the vehicle?

1 A. Yes, sir. Inside the vehicle.

2 Q. Where was it in the vehicle?

3 A. Those items were in the back trunk of the vehicle.

4 Q. Government's 27. Do you recognize that?

5 A. That was in the front of the vehicle.

6 Q. And Government's Exhibit No. 28. Do you recognize
7 that?

8 A. Yes, sir. It was a military driver's license.

9 Q. Government's Exhibit No. 29. Do you recognize these
10 documents?

11 A. Yes, sir. There were more documents inside the box
12 of the -- where the other documents were located.

13 Q. Government's Exhibit No. 30. Do you recognize that?

14 A. Yes, sir. There's some personal certificates of
15 achievements that were also located with those personal items.

16 Q. And Government's 31. Do you recognize that?

17 A. Yes, sir. It's a diploma for the Air Assault course
18 at Fort Campbell.

19 Q. Was it also there in the box?

20 A. It was also in the box. Yes, sir.

21 Q. Government's 32. Do you recognize that?

22 A. Yes, sir. That was actually in the back seat or in
23 the pocket of the front seat of the car.

24 Q. Okay. And finally Government's Exhibit No. 33. Do
25 you recognize that?

1 A. The receipt for the handcuffs that was located in a
2 plastic bag on the drivers -- the passenger side of the front
3 of the vehicle.

4 MR. FRAZIER: All right. We'll offer Government's Exhibit
5 Nos. 20 to 23, then 25 through 33 into evidence at this time.
6 We are not offering Government's 24.

7 MR. BOYD: No objection, Your Honor.

8 THE COURT: They're admitted.

9 (Government's Exhibit(s) admitted: 20 thru 23,

10 (25 thru 33

11 BY MR. FRAZIER:

12 Q. Government's No. 20 being the passport for whom, sir?

13 A. Mr. Abdo.

14 Q. Government's 21 being the social security card in the
15 name of whom?

16 A. Mr. Abdo, sir.

17 Q. Government's Exhibit No. 22. A marriage certificate
18 bearing the names of who?

19 A. Mr. Abdo.

20 Q. Government's 23, the birth certificate bearing the
21 name of who?

22 A. Mr. Abdo again, sir.

23 Q. 25 you've previously described as school records
24 bearing whose name?

25 A. Mr. Abdo.

1 Q. And Government's Exhibit No. 26. Let me zoom out a
2 little bit on this. What is Government's Exhibit No. 26? Do
3 you recognize that?

4 A. Let me take a look closer. I'm getting old.

5 Q. Let me zoom in.

6 A. This is a certificate of school. Attending school.

7 Q. Basically like a State Department certificate --

8 A. That's correct.

9 Q. -- of school records?

10 A. Yes, sir.

11 Q. And whose names are in the school records? Whose
12 school record?

13 A. Mr. Abdo.

14 Q. Government's 27, the temporary vehicle pass. Whose
15 name is on 27?

16 A. Mr. Abdo.

17 Q. And Government's Exhibit No. 28, this temporary
18 permit. And whose name is on that certificate?

19 A. Mr. Abdo.

20 Q. Government's Exhibit No. 29. What type of paperwork
21 is Government's Exhibit No. 29?

22 A. Those are military records basically.

23 Q. Like enlistment and reenlistment records?

24 A. That's correct. Yes.

25 Q. Whose name is on those records?

1 A. Mr. Abdo.

2 Q. Government's Exhibit No. 30. What is that?

3 A. It's a certificate of training.

4 Q. In whose name?

5 A. Mr. Abdo.

6 Q. And these are from the U.S. Army, correct?

7 A. That's correct. Yes, sir.

8 Q. And Government's 31?

9 A. That's a certificate for the Air Assault course.

10 Q. And whose name is it?

11 A. Mr. Abdo.

12 Q. Government's 32?

13 A. Insurance policy.

14 Q. And whose name is on the insurance policy?

15 A. Mr. Abdo.

16 Q. And is it for the insurance policy for that vehicle?

17 A. It was. Yes, sir.

18 Q. Now, do you recognize -- you've had a chance to look
19 at Government's Exhibits 34 through 41 previously prior to
20 coming into court today, correct?

21 A. Yes, sir.

22 Q. Government's Exhibit No. 34. Do you recognize this?

23 A. Yes, sir. Those appear to be the same boxes that
24 were in the front seat or on the floorboard the passenger side.

25 Q. In fact are they also depicted in the photographs?

1 A. They are.

2 Q. Have you had a chance to view previously Government's
3 Exhibit No. 40?

4 A. Yes, sir. They are in the photographs.

5 Q. Okay. What is Government's Exhibit No. 35?

6 A. That's the cattle prod that was located in between
7 the passenger and driver side seat.

8 Q. 36?

9 A. Binocular holders.

10 Q. Like covers?

11 A. Covers. I'm sorry.

12 Q. Where were they located at in the vehicle?

13 A. I don't recall where those were located. Again I
14 wouldn't take a guess because there were so many items. I
15 think they were in the back seat of the vehicle.

16 Q. But they were in the vehicle?

17 A. They were inside the vehicle. Yes, sir.

18 Q. Government's Exhibit No. 37?

19 A. Keys that were located on the passenger side seat.

20 Q. Okay. Were these like the keys to the vehicle?

21 A. It looks like the same keys that were laying on the
22 unsecured vehicle.

23 Q. Government's Exhibit No. 38?

24 A. Mr. Abdo's hat. Military hat.

25 Q. Do you recall where this was?

1 A. In the back seat.

2 Q. Government's Exhibit No. 39. Do you recognize this?

3 A. Just trash bags?

4 Q. Yes.

5 A. And they were in the trunk.

6 Q. Government's Exhibit No. 40. Do you recognize this?

7 A. Plastic ties. They were located inside the toolbox
8 in the trunk.

9 Q. And Government's Exhibit No. 41?

10 A. They were in a toolbox also in the trunk.

11 Q. And what is 41?

12 A. Electrical tape.

13 MR. FRAZIER: Okay. Your Honor, we'll offer into evidence
14 at this time Government's Exhibit Nos. 34 through 41 into
15 evidence.

16 MR. BOYD: No objection.

17 THE COURT: They're admitted.

18 (Exhibit(s) admitted: G34 thru G41)

19 BY MR. FRAZIER:

20 Q. If I didn't previously, I want to verify.

21 Government's Exhibit No. 33 is -- you described as a receipt
22 for handcuffs?

23 A. Yes, sir. U.S. Cavalry.

24 Q. And from your training and experience in the military
25 do you know what Government's Exhibit Nos. 7 and No. 13 are?

1 A. That's the body bag and a body bag liner.

2 Q. Do you see these in your experience frequently as a
3 law enforcement officer?

4 A. I have never seen it in my law enforcement career or
5 on the streets.

6 MR. FRAZIER: Pass the witness, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BOYD:

9 Q. Did you ever cause any charges to be filed against
10 Mr. Abdo?

11 A. No, sir. I did not.

12 MR. BOYD: Nothing further.

13 MR. FRAZIER: We have no further questions, Your Honor.
14 May this witness be excused?

15 THE COURT: Objection, Counsel?

16 MR. BOYD: None, Your Honor.

17 THE COURT: You may step down, sir, and you may be
18 excused.

19 We'll recess for lunch at this point until 1:30, ladies
20 and gentlemen.

21 Members of the jury, let me caution you that you -- I've
22 told you that you should not talk about the case with each
23 other or anyone. You're certainly free to eat lunch together
24 if you wish. Just talk about the beautiful weather we're
25 having and don't talk about the testimony you've heard,

1 anything related to the case and certainly you should not use
2 any electronic media to try to gain any information from the
3 case, any cell phone, iPhone computers, anything of that
4 nature. We'll recess until 1:30. Be back in the jury room
5 shortly before then. We'll be ready to proceed.

6 LAW CLERK: All rise.

7 (Jury exited the courtroom at 11:59.)

8 LAW CLERK: Court will stand in recess until 1:30.

9 (A break was taken from 12:00 to 1:31.)

10 LAW CLERK: All rise.

11 (The jury entered the courtroom at 1:31.)

12 THE COURT: Be seated, everyone.

13 Mr. Frazier?

14 MR. FRAZIER: We'll call Stephen Hauck as our next
15 witness.

16 Just so you know, Your Honor, this is a witness that's out
17 of order. It's out of the regular order. The next witness
18 Mr. Mothershead will be the same way and I've already informed
19 defense counsel.

20 (The witness was sworn.)

21 DIRECT EXAMINATION

22 BY MR. FRAZIER:

23 Q. Would you please introduce yourself to the ladies and
24 gentlemen of the jury?

25 A. My name's Stephen C. Hauck. I'm an agent with the

1 Federal Bureau of Investigation.

2 Q. Are you assigned in Austin, Texas?

3 A. Yes, sir.

4 Q. Okay. And did you -- as part of your job with the
5 FBI did you take samples of certain items to be sent to the FBI
6 crime lab in Quantico, Virginia?

7 A. Yes, sir. I did.

8 Q. Okay. I'll show you what's been marked for
9 identification purposes as Government's Exhibit Nos. 90 through
10 95. They're all contained in this bag and they're all
11 canisters marked 90 through 95 in this manner, correct?

12 A. Yes, sir. As I received them, they were 1B20 from
13 the search.

14 Q. Okay. That's an FBI lab number that's -- or not lab
15 number but a case number that's assigned to items that were --
16 that are seized?

17 A. Yes, sir.

18 Q. And just so the record -- this is Government's
19 Exhibit No. 90, 91, 92, 93, 94 and 95?

20 A. Yes, sir.

21 Q. Okay. Were these -- where were these items seized
22 from if you know?

23 A. As I understand it it was from the hotel room in
24 Killeen, Texas.

25 Q. That'd be Room 230 of America's Best Value Inn and

1 Suites in Killeen, Texas?

2 A. Yes, sir.

3 Q. Okay. And after they came into your custody, what
4 did you do with the items marked 90 through 95?

5 A. I obtained samples from those items and packaged
6 them, provided them to our evidence technician who then shipped
7 them to the FBI laboratory.

8 Q. Okay. And that would be to the FBI crime laboratory
9 in Quantico, Virginia, correct?

10 A. Yes, sir.

11 Q. Okay. And do the samples bear your initials?

12 A. Yes, sir.

13 Q. Did likewise 90 through 95 bear your initials as
14 opening and taking samples from those?

15 A. Yes, sir.

16 Q. I show you what's been marked as Government's Exhibit
17 No. 119. Can you see that?

18 A. Yes, sir.

19 Q. And Government's Exhibit No. 120. Do you see that?

20 A. Yes, sir. I do.

21 Q. Have you had a chance to see it before coming into
22 court today?

23 A. I have.

24 Q. And what are -- Government's Exhibit Nos. 119 and
25 120, where did these come from?

1 A. The one in the manila envelope --

2 Q. 120?

3 A. -- came from a pressure cooker that was found in the
4 same room as the powder.

5 Q. Okay. 90 through 95 that you just identified?

6 A. Yes, sir.

7 Q. Okay. And specifically this item that's marked Q49,
8 what was done with this item?

9 A. A sample was taken. It was packaged, provided to an
10 evidence technician who then shipped it to the FBI laboratory.

11 Q. And this would be the Quantico laboratory, correct?

12 A. Yes, sir.

13 Q. And ultimately the entire item went to the Quantico
14 laboratory?

15 A. As I understand, yes, sir.

16 Q. Okay. And finally next Government's Exhibit No. 119.
17 What did you do with Government's Exhibit 119?

18 A. I took a sample of that item, packaged it and sent it
19 to the FBI laboratory in Quantico, Virginia.

20 Q. And did you likewise make markings on both these
21 exhibits indicating that you had taken a sample or done some
22 type of processing for it to be forwarded to the FBI crime lab
23 in Quantico, Virginia?

24 A. Yes, sir.

25 MR. FRAZIER: Pass the witness, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. BOYD:

3 Q. So all you did was -- and the only knowledge that you
4 have is in regards to taking samples and sending them off to
5 Quantico, Virginia?

6 A. In terms of this case?

7 Q. Well, in terms of regarding these items that you were
8 just looking at.

9 A. Yes, sir. I just took the samples and provided them
10 to the evidence technician for further shipment.

11 Q. And you don't know -- you weren't at the scene at
12 all?

13 A. Yes, sir. I was.

14 Q. You were?

15 A. Yes, sir.

16 Q. So did you recover any of these items?

17 A. I did not.

18 Q. Did you view these items while they were at the
19 scene?

20 A. I did.

21 Q. Okay. So you saw the physical locations. Now, the
22 stuff at the scene, was that before or after the items got
23 moved by EOD?

24 A. I came in behind EOD.

25 Q. So EOD had already moved everything in the room?

A. I can't say -- I can't testify to what they did or did not do.

Q. So you didn't review any of the reports to see whether or not they had?

A. I did not.

Q. Have you ever appeared behind EOD before?

A. Have I ever followed in behind EOD?

Q. Yes.

A. I have.

Q. Is it their practice to move things?

A. I do not know for a fact whether they do or not.

MR. BOYD: Nothing further.

MR. FRAZIER: Nothing further, Your Honor.

THE COURT: You may step down, sir.

Any objection to the witness being excused?

MR. BOYD: No, Your Honor.

MR. FRAZIER: No, sir.

THE COURT: You may be excused, sir.

MR. FRAZIER: Robbie Mothershead will be the government's next witness.

(The witness was sworn.)

DIRECT EXAMINATION

BY MR. FRAZIER:

Q. Would you please introduce yourself to the ladies and gentlemen of the jury?

1 A. Yes. My name is Robert Mothershead. The last name
2 is spelled M-o-t-h-e-r-s-h-e-a-d.

3 Q. And how are you employed?

4 A. I'm employed by the Federal Bureau of Investigation.

5 Q. And what do you do for the FBI?

6 A. I'm a forensic chemist examiner in the FBI's
7 laboratory division.

8 Q. And what type of specialty do you have within the FBI
9 in the forensic examination area?

10 A. I'm a member of the explosive units and my work
11 focuses on explosives chemistry, the residues of explosives as
12 well as ignitable liquids which are things like gasoline,
13 kerosene, diesel that are used in arson cases.

14 Q. All right. And what qualifies you for that position?

15 A. I have a bachelors degree in chemistry. I have a
16 masters degree in marine science. I have also completed an
17 extensive training program at the FBI laboratory in the area of
18 explosives analysis. This included going through analyzing
19 practice samples all under the supervision of a qualified
20 examiner, passing competency tests in each of the types of
21 methods and procedures that we use for that analysis. I then
22 continued to analyze actual samples in casework. I have passed
23 annual proficiency tests in the area of explosives analysis for
24 each year that I have done that. I've studied the literature
25 on explosives as well as their analysis. I've taken

1 specialized coursework on the instruments and the machines in
2 the lab that I use for this analysis and I have over nine years
3 of experience analyzing explosives and explosive residues.

4 Q. And how many cases in your career have you --
5 approximately is it -- let me rephrase the question.

6 Would it be safe to say that you've investigated or you've
7 given an opinion based on your examination of explosive
8 material in hundreds of cases during that time?

9 A. I've analyzed hundreds of samples. I've written
10 perhaps 100 reports. I don't have an exact number for you on
11 that.

12 Q. That's what I'm asking you about. So are you
13 qualified based on your training and experience to take an
14 unknown substance, analyze it and determine what that substance
15 is and determine whether or not it's an explosive or not or
16 what type of action it may have based on the chemical analysis
17 you do?

18 A. Yes, again focused on explosives.

19 Q. Okay. And have you done that on few or many
20 occasions in the years you've been an analyst doing explosives
21 work?

22 A. Yes. Many.

23 Q. Okay. I want to ask you if you received from the FBI
24 Austin office from an evidence technician samples that were
25 submitted by Stephen Hauck from six bottles of what was

1 represented to be smokeless powder?

2 A. Yes. Evidence came into the laboratory and then I
3 was presented the samples for analysis.

4 Q. Okay. I want to ask you first of all -- and so I'm
5 clear on this I'm going to follow your lab numbers. They're a
6 little bit different than my exhibit numbers, but I want to
7 make sure we're talking about the same thing. Okay?

8 A. Okay.

9 Q. Q16 is a sample from a Hogdon brand 4350 canister; is
10 that correct?

11 A. That's how it was reported in the incoming
12 information.

13 Q. I'm showing you what's been marked as Government's
14 Exhibit No. 94 for identification purposes only. Would that be
15 a container that you have a photograph of that accompanied the
16 exhibits you received?

17 A. I received photographs of a similar bottle. I can't
18 tell you if that's the exact one.

19 Q. That's not what I -- I'm sorry. Let me rephrase the
20 question. It's similar to -- it's the same bottle -- not the
21 same bottle but it's the same type of bottle that's depicted in
22 the photographs?

23 A. For that bottle. Yes, sir.

24 Q. And the sample that you submitted had that type of
25 reference number the Hogdon brand 4350, correct?

1 A. It was handwritten on the bag that the sample was
2 contained in.

3 Q. Okay. Government's Exhibit No. 95, your Q17 -- or
4 I'm going to ask you to compare it to Q17. A Hogdon brand HS7
5 canister.

6 A. Yes.

7 Q. Okay. Is that what was represented in the
8 photographs that was submitted to you as well?

9 A. That was represented in the photographs.

10 Q. Government's Exhibit No. 90, an IMR 4198 canister.
11 Was that likewise depicted in the photographs associated with
12 the sample that was submitted to you?

13 A. Yes.

14 Q. Government's Exhibit No. 92, Hogdon H414 canister.
15 Is that also depicted in the photographs submitted to you with
16 the sample that was also submitted?

17 A. Yes.

18 Q. And that's your Q19. And in Q20, Government's
19 Exhibit No. 91, a canister marked Hogdon brand HS6 canister.
20 Was that likewise a photograph submitted of that along with the
21 sample represented from -- to be from this canister?

22 A. Yes.

23 Q. And finally your Q No. 21, Government's Exhibit No.
24 93, a sample from Hogdon brand Lil'Gun canister. Was a
25 photograph of this canister likewise submitted to you along

1 with a -- what was purported to be a sample?

2 A. Yes.

3 Q. Okay. When you received these samples into your lab
4 and these photographs, tell the ladies and gentlemen of the
5 jury what you did.

6 A. Because these samples were purported to be from cans
7 of smokeless powder, I conducted the analysis that we do for
8 smokeless powder. That's fairly unique, low explosive
9 material. It has particular types of shape of form to it which
10 I can see very clearly under a microscope. So the very first
11 thing I do if I get in a gray powder, which is what smokeless
12 powder looks like, is to look under the microscope, see if I
13 see any of those recognizable shapes. Those shapes can be
14 referred to as flakes or disks almost like slices of pepperoni
15 or they can be in little balls or the balls can be squashed
16 somewhat so they'll have flat surfaces or they can be like
17 squares that are cut on an angle. So I look for these
18 characteristic shapes and forms. If I see that, I then proceed
19 to the chemical analysis. Smokeless powders are a -- similar
20 to what you would think of as pasta. They're a dough that's
21 blended with lots of chemicals in together and I look to see if
22 I can identify the chemicals that are in it if those chemicals
23 are the chemicals that are used in smokeless powder. And
24 that's the procedure we use for that.

25 Q. Okay. And as to each of the exhibits, your marked

1 Q16 through Q21, my Government's Exhibits 90 through 95 that I
2 just showed you the canisters of, what as to each of those
3 samples were you able to make a determination? First as to
4 Q16, Government's Exhibit No. 94?

5 A. That sample that I received was smokeless powder and
6 I also compared that to a reference collection of data that we
7 have in the lab on like, make and models of smokeless powder
8 that we've analyzed and it also matched to that make and model.
9 The chemistry and the physical shape were a match to that as
10 well.

11 Q. Meaning it was similar to -- in size and shape and
12 characteristics to Hogdon H4350 rifle powder?

13 A. It was consistent in both the physical and the
14 chemical characteristics with that make and model of smokeless
15 powder.

16 Q. Next Government's Exhibit No. 95, your sample No.
17 Q17, the sample that you received. Tell the jury what the
18 results of your analysis was on that.

19 A. Again it was identified as a smokeless powder.
20 Comparing it to our reference collection for that make and
21 model, it was physically and chemically consistent.

22 Q. Okay. And meaning it would be consistent with Hogdon
23 HS7 pistol powder?

24 A. As labeled. Yes.

25 Q. Next Government's Exhibit No. 90, sample submitted

1 referenced IMR 4198. Can you tell the jury what the results of
2 your tests were on that sample?

3 A. Yes. It was identified as a smokeless powder. Again
4 it was physically and chemically consistent with our reference
5 collection material that is similar to that make and model of
6 powder on the label.

7 Q. Meaning IMR 4198?

8 A. Correct.

9 Q. Next your Q19, Government's Exhibit No. 92. Can you
10 tell the jury what the result was of your analysis of that
11 sample?

12 A. Yes. That was identified as a smokeless powder.
13 Again the chemistry and the physical form are consistent with
14 that H414 from our reference collection and as depicted on the
15 label.

16 Q. All right. And finally Government's Exhibit No.
17 91 -- no. I'm sorry. Next Government's Exhibit No. 91, your
18 reference No. Q20. Tell us what the results of your tests were
19 on the sample that was submitted.

20 A. Again the contents were identified as a smokeless
21 powder and it was physically and chemically consistent with our
22 reference collection data for that make and model of material.

23 Q. That would be Hogdon HS6?

24 A. Correct.

25 Q. Finally Government's Exhibit No. 93. The sample from

1 the -- the sample submitted from this particular bottle or
2 represented to be from this particular bottle. What was your
3 analysis of that sample, your Q No. 21?

4 A. It was identified as a smokeless powder. Again it
5 was physically and chemically consistent with our reference
6 collection Exhibit 4 Lil'Gun which is the same as the labeling
7 on that.

8 Q. That would be Hogdon Lil'Gun?

9 A. Hogdon Lil'Gun. Yes.

10 Q. So then do you have an opinion then as to what is
11 contained in each of the items taken Government's Exhibit
12 Nos. 90 through 95?

13 A. The samples that I received in the lab each were
14 smokeless powder and each were consistent physically and
15 chemically with the labeling that was purported to be on the
16 bottle that they were taken from.

17 Q. Okay. What is smokeless powder? I think you've
18 generally described the chemistry of it. What is smokeless
19 powder used for?

20 A. Smokeless powder is used as a propellant in
21 ammunition. So it's designed to burn at a controlled rate
22 creating gas and that gas is then used to push or propel a
23 bullet or a shotgun load or in large ammunition a rocket or
24 something along its way.

25 Q. Does it have other uses other than just for

1 ammunition?

2 A. It's ammunition. In large scale military
3 applications it can be fairly large shells.

4 Q. But in addition those are the uses other than what
5 it's intended for. In other words uses other than just for
6 ammunition. Is it explosive and can it be used to build
7 destructive devices?

8 A. It is classified as a low explosive, meaning it burns
9 instead of instantaneously going away. It builds up that gas.
10 It can build up pressure. If there's not a way to release that
11 pressure as would normally happen in a gun where the bullet
12 leaves the barrel and the pressure is finally released out of
13 the end, that pressure builds up. That can cause an explosion.

14 Q. All right. Thank you.

15 You've had a chance before coming into court today to see
16 Government's Exhibit No. 119, your Q No. 35, and Government's
17 Exhibit No. 120, your Q No. 49?

18 A. Correct.

19 Q. Okay. And can you tell us what analysis you
20 performed on Government's Exhibit No. 119 first of all?

21 A. Again can you cite the Q number?

22 Q. Q No. 35. Excuse me.

23 A. Q35 I looked at that under the microscope. I did not
24 see when I held it up to my naked eye any dark gray material
25 which is what smokeless powder looks like. So I looked at it

1 on the microscope. I did not see any of the shape, form or
2 color of material that would look like smokeless powder. So at
3 that point I stopped all examinations. No further chemical
4 testing was done on that.

5 Q. Okay. Did you later try to identify what the white
6 what looks like powder or pellets inside -- first of all, Q35
7 contains what looks like BBs or shot and some small white
8 granules in it, correct?

9 A. Right. There was small metal balls looked like BBs
10 and then there was also a sort of white or opaque kind of off
11 white plastic looking material grains in there. Almost looked
12 like rice grains.

13 Q. Were you able to identify what at least one of the
14 ingredients was?

15 A. I did not do chemical testing on that particular
16 item.

17 Q. Okay. What does this appear to you to be?

18 A. It appears as to be a small grain of a plastic
19 material. Since conducting this analysis --

20 Q. Right.

21 A. -- I have done some research into what possibly can
22 come out of ammunition. There is a possible candidate of the
23 buffer material that is used in some shotgun shells mixed in
24 with the shot to make a tighter target essentially of the shot
25 coming out.

1 Q. All right.

2 A. That's a possibility.

3 Q. Correct.

4 Now I'm showing you Government's -- your Q49, Government's
5 Exhibit No. 120. Do you recognize this?

6 A. I believe so. It's a little far away actually.

7 MR. FRAZIER: May I approach the witness briefly, Your
8 Honor?

9 THE COURT: Yes, sir.

10 BY THE WITNESS:

11 A. Yes. I recognize that.

12 BY MR. FRAZIER:

13 Q. Tell us what Government's Exhibit No. 120 -- you
14 performed an analysis on that as well, correct?

15 A. I did. And the first step was to look at it under
16 the microscope. I could tell that there was some dark material
17 in there. When I looked at it under magnification, I could see
18 some of the shapes, those disks or flakes that I mentioned that
19 were characteristic of possible smokeless powder. I then
20 proceeded to do chemical testing on that dark material. Again
21 identified it as smokeless powder.

22 Q. Okay. And the other items that are in there with the
23 dark powder, what are those? What do those appear to be?

24 A. So there appeared again to be BBs, small metal
25 spheres. There also appeared to be again those white rice

1 grain type looking materials in which case I did test one of
2 those since they were mixed in with the smokeless powder just
3 to make sure it wasn't an explosive and also to see if it was
4 going to have any chemistry that would potentially contaminate
5 or conflict with my analysis for the smokeless powder
6 particles.

7 Q. And what did your analysis reveal those white grains?

8 A. I did a quick test just to see what the bulk material
9 was. The test indicated a very strong possibility for
10 polyethylene which is a plastic.

11 Q. Okay. Is polyethylene an ingredient in some
12 buffering of shotgun shells?

13 A. It's -- I found it listed as an ingredient in some of
14 the -- some of the buffer materials.

15 Q. For shotgun ammunition?

16 A. Correct.

17 Q. Okay. And so basically then do you have an opinion
18 then of what is contained in Government's Exhibit No. 120, the
19 black powder?

20 A. The black powder was smokeless powder.

21 Q. Okay. And did you do an analysis like you did a
22 reference to try to reference the sample to see maybe where it
23 originated or where it could have come from based on your
24 library of materials?

25 A. Not specifically. The chemistry of that material was

1 very similar as well as the physical form to one of the earlier
2 items that was introduced. It was our Q21. So again in
3 looking through the database I found several different examples
4 of smokeless powders in our over 700 and some references that
5 have similar chemistry and physical shape. So it could be any
6 of those particular ones or it could be others that we simply
7 haven't analyzed yet in our lab.

8 Q. For instance it could be gun powder out of a shotgun
9 shell?

10 A. That's certainly possible. Yes.

11 Q. But you -- that's not something you would analyze
12 for?

13 A. I analyze for the smokeless powder. You can get the
14 smokeless powder out of shotgun shells or you can buy it across
15 the counter at retailers that sell smokeless powder for
16 reloading purposes.

17 Q. Okay. Now, did you also receive from the FBI office
18 in Austin, Texas Government's Exhibit No. 137, your Q No. 45?

19 A. Yes. I did.

20 Q. This being a metal plate with what looks like a
21 melted razor on it, correct?

22 A. There were several things in there including the
23 melted plate. There was a plastic bag or film material.
24 Adhered to that was -- appeared to be some melted plastic which
25 contained -- it looked like a disposable blue plastic razor

1 that was caught up in that melt.

2 Q. Okay. Did you perform an analysis on 137?

3 A. I did. Again I looked at the item under a microscope
4 to see if there were any dark grains that were stuck in that
5 and found some that were adhered both lightly to the plastic as
6 well as embedded in some of the -- what appeared to be melted
7 plastic to me and some loose materials that were again dark
8 grain.

9 Q. Okay. And what -- did you perform an analysis on any
10 of the dark grains?

11 A. I did.

12 Q. And what did you do?

13 A. I conducted the smokeless powder analysis that I
14 discussed earlier, again looking at them noting the shape and
15 form and then conducting the chemistry analysis on them.

16 Q. Okay. What -- do you have an opinion as to what
17 those black grains were?

18 A. They were smokeless powder.

19 Q. Okay. Were you able to compare them as being similar
20 to anything else you had analyzed in this particular case?

21 A. Again they had the same physical form and the same
22 chemical makeup as both the smokeless powder that was in Q21.

23 Q. Which is Government's Exhibit No. 93?

24 A. Okay. And they also had the same physical form and
25 composition as what was the smokeless powder particles in Q49.

1 Q. Which is Government's Exhibit No. 120?

2 A. Okay.

3 Q. And this particular plastic that's here that -- in
4 addition to the -- what appears to be a melted razor that --
5 what -- the white plastic there, was that consistent with
6 anything that you -- or that you observed in your analysis of
7 these items?

8 A. Yes. Because the smokeless powder particles were
9 embedded and in direct contact with that, again I took a small
10 sampling of that -- a shaving of that melted material and did a
11 quick analysis just to see what sort of background chemicals
12 might be present. The testing I did indicated again a strong
13 possibility that material was polyethylene.

14 Q. Would that be similar -- polyethylene be similar to
15 the analysis you did on the white or rice like items in
16 Government's Exhibit No. 120, your Q49?

17 A. It was the same analysis and the same results.
18 That's not a final identification of polyethylene. A polymer
19 chemist in the explosives -- or in the FBI laboratory would
20 have had to make the final identification of polyethylene. But
21 it was consistent with that based on my initial analysis.

22 Q. Okay. And would that be consistent then with --
23 could it be consistent rather with gun powder and buffering and
24 shot that came from a shotgun shell?

25 A. It was polyethylene. Polyethylene's a fairly common

1 plastic. So yes. It was in those items and indications that
2 the buffering material can have polyethylene. It could also be
3 another source.

4 Q. It could have come from another source. That's
5 correct. But one of the item -- sources it could have come
6 from would be that?

7 A. Correct.

8 Q. Do you know how a shotgun shell is put together or
9 manufactured?

10 A. Very roughly.

11 Q. Roughly how is it done?

12 A. Roughly at the end of -- one end of the shotgun shell
13 is the primer cup. The -- that's hit, creates a spark that
14 lights the smokeless powder which then burns, cause that
15 propelling and then that pushes against a wadding material
16 that's in the shell and then the shot material, usually the
17 metal spheres, push them out of the barrel.

18 Q. And the buffering is mixed in with the shot?

19 A. When it's present it's mixed in with the shot. The
20 metal spheres.

21 MR. FRAZIER: Pass the witness, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BOYD:

24 Q. So basically you tested the contents of this and
25 determined this is really smokeless powder?

1 A. Correct.

2 Q. And that's for each of these six bottles?

3 A. Correct.

4 Q. You testified that it's a low explosive?

5 A. Correct.

6 Q. And that's because it burns?

7 A. Correct. One of the ways of classifying explosives
8 is how rapidly it reacts and they're classified into low
9 explosives and high explosives. So high explosives go away
10 almost immediately. So we think of the traditional military
11 explosives are blasting explosives. Low explosives are one
12 again that burn at a rate we can notice. So this class
13 includes the pyrotechnics fireworks as well as smokeless
14 powders.

15 Q. And with respect to creating an explosive reaction,
16 you noted pressure is required with stuff like this?

17 A. Right. In open air burning that material it doesn't
18 explode. It can build up pressure because of the release of
19 the gas. That pressure build up can ultimately lead to an
20 explosion.

21 Q. And in the open air it's not an explosion. It's a
22 deflagration?

23 A. Correct. Deflagration is a very fast burn.

24 Q. And all that means is we haven't reached the required
25 definition to have an explosion. We have a burn but we don't

1 have an explosion?

2 A. Actually that's not quite correct.

3 Q. Okay.

4 A. An explosion is a rapid release of energy. And that
5 can come in various forms and usually it's accompanied with
6 heat and light and sound. So a low explosive can cause an
7 explosion if that pressure and that heat is retained and to the
8 point where it ruptures whatever container or vessel it is and
9 all of a sudden there's a rapid release of that energy.

10 Q. Okay. So you don't differentiate between an
11 explosion and a deflagration?

12 A. Deflagration relates to the burning rate of the
13 material itself. The explosion is more a description of the
14 event that occurs again with that rapid release of energy. So
15 a deflagration can if contained in that material and the gases
16 and all retained can lead to an explosion, but it doesn't have
17 to. It depends on how it's -- how the device, whether it be a
18 gun or whatever, is designed and built.

19 Q. And so it's important for a device to be designed and
20 built the right way?

21 A. Yes. And again I should make a note here. I am an
22 explosives chemist. I do analytical chemistry. I am not a
23 device examiner in the unit. Those are other examiners that
24 are present that are the device experts.

25 Q. Well, I understand, but you understand how this stuff

1 works?

2 A. I have, yes, a basic understanding of --

3 Q. And --

4 A. -- how it works.

5 Q. And you understand that as a scientist things are
6 supposed to be done very precisely, right? When you're
7 testifying, you test things very precisely?

8 A. We try to. Yes.

9 MR. BOYD: Your Honor, just one moment.

10 BY MR. BOYD:

11 Q. With regards to the items that you tested, did you
12 just work with samples or did you work with samples and
13 locations from which they were tested?

14 A. I'm not clear I understand the question.

15 Q. Did you just receive something in the mail that was a
16 sample and just test it to establish what it was or were you
17 made aware of where it came from?

18 A. I received a sample in the mail that I analyzed.
19 There was information contained as far as the container that
20 the loose powders were submitted from. So that information was
21 provided. There's general case information. Beyond that I'm
22 not clear what specifics.

23 Q. You never saw the crime scene?

24 A. Correct. I did not.

25 Q. You never went back behind it and asked to look at

1 photos from the crime scene?

2 A. No. I did not.

3 Q. You never did anything investigatory towards the case
4 other than classify these items?

5 A. I just conducted the chemical analysis.

6 MR. BOYD: Nothing further.

7 MR. FRAZIER: Nothing further, Your Honor.

8 THE COURT: You may step down, sir, and you may be
9 excused.

10 MR. SCHNEIDER: The government calls Abraham Wherry.

11 (The witness was sworn.)

12 DIRECT EXAMINATION

13 BY MR. SCHNEIDER:

14 Q. Good afternoon, Mr. Wherry.

15 A. Good afternoon.

16 Q. Would you please state your name for the record?

17 A. Abraham Eugene Wherry.

18 Q. And by whom are you employed?

19 A. [REDACTED].

20 Q. How long have you been employed at [REDACTED]?

21 A. A couple years. About two.

22 Q. And where is that [REDACTED] store that you're
23 employed?

24 A. Antioch, Tennessee.

25 Q. Where do you reside?

1 A. [REDACTED].

2 Q. Now, directing your attention to July of 2011. Were
3 you offering any items for sale at that time?

4 A. Yes. Selling an XD 40-caliber handgun.

5 Q. And how did you list that item?

6 A. I listed it on Boo.com which is like Fort Campbell
7 type Craig's List for the military base there.

8 Q. And who has access to that web site?

9 A. Anyone has access to it but mostly military and
10 military families use it to sell and buy used goods and they
11 also have a military section for military gear or firearms.

12 Q. And what exactly were you selling as part of the gun?
13 Was anything else included?

14 A. Yes.

15 Q. Or was it just the gun?

16 A. It was a handgun. I had two mags that came with the
17 gun. I also had bought an extra mag, an extended clip and I
18 put that in and a holster and the original case that it came in
19 with a lock for the gun.

20 Q. And was there any ammunition included with that sale?

21 A. Yeah. I had a one round -- well, one magazine full
22 of ammunition.

23 Q. And one magazine would hold about how many rounds?

24 A. I think it was in the extended mag and that would
25 have been about 12. If it was in the regular mag it would have

1 been nine, but I think it was the extended mag which would have
2 been about ten to 12 if I had them in there.

3 Q. And you were including some ammunition with the sale?

4 A. Yeah. I think I had one mag full and I took them out
5 before I had sold the gun and gave it to him.

6 Q. Did there come a time that you ultimately found a
7 buyer for that gun?

8 A. I did.

9 Q. When was that?

10 A. July the 7th is when I sold it of 2011 I believe.

11 Q. And how were you contacted by the buyer?

12 A. Through the phone. I think he had text messaged me.
13 I don't remember exactly if he texted me or called me, but I'm
14 pretty sure he texted me.

15 Q. Did there come a time when you met with the buyer to
16 sell that gun?

17 A. I did.

18 Q. And when was that?

19 A. July the 7th I believe the date was.

20 Q. That was 2011?

21 A. Yeah.

22 Q. And where -- where did you set up a meeting to sell
23 that gun?

24 A. Downtown Nashville.

25 Q. What time of day were you setting up that meeting?

1 A. It was sometime in the afternoon. It was before I
2 had to go to work. So sometime mid afternoon. I'm going to
3 say between 1:00 and 3:00 or 1:00 and 4:00. Between 1:00 and
4 4:00ish.

5 Q. And did you choose any specific location in downtown
6 Nashville?

7 A. Yeah. The UPS. I -- basically any time -- that's
8 the first time I sold a handgun, but I had a -- required to get
9 a notary, a bill of sale. So I told him to meet me downtown
10 because I was going to get a bill of sale at the UPS. So we
11 met downtown and that's why I met there because UPS would
12 notary.

13 Q. Okay. So you knew that UPS you can get a notary?

14 A. Yeah.

15 Q. You can get something notarized there?

16 A. Yeah. I checked with them to make sure they do the
17 notaries and I wrote a bill of sale out. So...

18 Q. Now, how far is Nashville from Fort Campbell?

19 A. About -- driving minutes wise?

20 Q. Yes.

21 A. About 40 minutes.

22 Q. And did there come a time that you actually met up
23 with the buyer by that UPS store?

24 A. Yeah. We did. That same day that afternoon.

25 Q. Now, how did you recognize the buyer? Did you know

1 the buyer or was it someone you had never met?

2 A. No. I'd never met him. I didn't know him, but I
3 think we were texting and I was asking where he was at and he
4 had given me a call or I gave him a call. I don't remember.
5 And I was on the street driving straight and I had seen him. I
6 don't remember the exact words, but he either said I'm the one
7 with the hat and glasses or I had seen him on the phone when he
8 was walking. I was like, I think I see you and then he came up
9 and got off the phone. Then I let him in the car and then we
10 went around -- well, we went like a block up the street and
11 pulled into a parking -- a parking lot.

12 Q. So when you first saw him you mentioned he was
13 wearing a hat and glasses. Can you describe the hat and
14 glasses?

15 A. Just like a front -- like a billed hat where it's
16 bent in the front and some like shades like darker shades like
17 what a -- what you would see a lot of the I guess you could say
18 younger military guys wearing.

19 Q. And did he wear those shades -- were they sunglasses?

20 A. Yeah. They looked like -- yeah -- yeah. Sunglasses.
21 Either sunglasses or maybe some like shooting glasses but yeah.
22 One or the other and he had a T-shirt and I believe some shorts
23 on.

24 Q. Did he wear the sunglasses the whole time if you
25 remember?

1 A. No. I think he took them off in the car. I'm pretty
2 sure he did because we was talking for a little bit.

3 Q. Okay. And what did you do after meeting up in the
4 car?

5 A. Well, we went to the parking lot and I just asked him
6 about the military, you know, if he liked it and stuff like
7 that and what he did in the military and -- because I was
8 interested in joining the military. My family's military and,
9 you know, I showed him the gun. I basically showed him all the
10 basic functions of the gun, how to break it down, just
11 cleaning, just basic functions of it and then we went inside,
12 got a notary. At some point he'd also got an envelope to put
13 it in to put the box --

14 Q. Okay. Let me stop you there and just go back to the
15 car. So you're in the car. You meet up with the buyer. And
16 what exactly are you talking about if you remember?

17 A. Well, I was asking about the military if he liked it.
18 He said -- I think he said it was okay or something around
19 about like that. I asked him -- I think he told me he had got
20 back from overseas doing maybe a tour or, you know, he just got
21 back or something and he might have mentioned -- I don't
22 remember exactly. He might have mentioned that he was thinking
23 about getting out. I think he had told me also that the gun --
24 he was just using it for home protection, you know, and I think
25 that's about it and just the basic functions of the gun like

1 the breakdown, takedown lever.

2 Q. Okay. Do you recall anything about the way he spoke?

3 A. Yeah. He had a slight accent like I didn't know
4 where it was from, but I was thinking he was -- I was trying to
5 pinpoint it when I was actually speaking to him but I was
6 thinking he was just from maybe like just, you know,
7 somewhere -- somewhere where they talk like the way he talks,
8 you know.

9 Q. Now, while you were in the car, other than making
10 small talk did you discuss guns generally and that gun
11 specifically?

12 A. Not really. I mean, we discussed that gun
13 specifically because I was just basically giving him the
14 information that I know like the basic stuff because even
15 though he's in the military, I don't think regular soldiers
16 carry sidearms or handguns. I think most of them carry just
17 their primary weapon which is the M4 or whatever and they don't
18 carry a handgun unless they're an officer. So I didn't
19 really -- it didn't strike me as something that was unusual.
20 So I just talked about the gun. I just told him how to break
21 it down, clean it. I might have showed him side alignment.
22 You know, other than that, that's about it. Maybe like the
23 ambidextrous mag release. I mean, just the basic functions.
24 That's it really. And then like I said about the information
25 on the military if he liked it and, you know, that's about it.

1 Q. So did you ultimately make a deal to sell that gun
2 while you were together?

3 A. I did.

4 Q. And what happened when you made that deal?

5 A. He gave me the money for -- I think it's 460 cash I
6 believe. I can't remember exactly, but I think it was around
7 460 cash. I gave him the gun, unloaded one of the magazines,
8 told him he could keep the ammo. It was like only 12 rounds or
9 so. I gave him -- I think I also gave him an extra holster
10 that I had for the gun that I was selling with it, but I think
11 I just threw it in there and gave it to him because I didn't
12 have a use for it. And either we had went inside and got the
13 notary and came back out. At some point though he had got an
14 envelope when he was inside and then --

15 Q. Okay. Let me stop you there and ask you about the
16 notary. You said you went inside to get a notary. What was it
17 that you were getting notarized?

18 A. The bill of sale for the handgun.

19 Q. And did you prepare a bill of sale?

20 A. I did. I wrote it out.

21 Q. Okay. I'm going to show you Exhibit No. 43 for
22 identification.

23 A. All right.

24 Q. Do you recognize that exhibit?

25 A. I do.

1 Q. What is it?

2 A. It's a -- my bill of sale for the Springfield XD
3 40-caliber handgun.

4 Q. And is it your handwriting on there?

5 A. Yes. It is.

6 Q. Is it your signature?

7 A. It is.

8 MR. SCHNEIDER: Your Honor, we move to have Government's
9 Exhibit No. 43 in evidence.

10 MR. BOYD: No objection.

11 THE COURT: It's admitted.

12 (Exhibit(s) admitted: G43)

13 BY MR. SCHNEIDER:

14 Q. Looking at that bill of sale, was that signed by the
15 buyer?

16 A. It was.

17 Q. Do you remember the buyer's name?

18 A. I don't remember the name he gave me when we met.

19 Looking at this, Asher Pluto. But I don't remember him
20 actually, you know, telling me his name, but I'm sure he did.

21 Q. Okay. Do you remember what the person looked like
22 that was the buyer of the gun?

23 A. I do.

24 Q. Okay. I'm now going to show you what's already in
25 evidence as Government's Exhibit No. 153A. Do you recognize

1 that photo?

2 A. I do.

3 Q. And who is that?

4 A. The gentleman that purchased the handgun from me.

5 Q. And just to show you 153B. Is that the same person?

6 A. Looks like the same person to me. Yep.

7 Q. Now, you said you went into the UPS store and you had
8 your bill of sale notarized?

9 A. Yes, sir.

10 Q. What, if anything else, happened while you were
11 inside the UPS store?

12 A. The only thing else that might have happened was he
13 got the envelope. I just don't remember when he got it in the
14 process of doing the notary for the bill of sale.

15 Q. Okay. Can you explain what you mean by he got the
16 envelope? What exactly happened with an envelope?

17 A. I think he just remembered that he needed to get an
18 envelope and I was like, okay. And then he bought -- he
19 purchased the envelope and then we went back to the car at some
20 point and when basically the transaction was complete and, you
21 know, he was -- he put the handgun -- we put the handgun in the
22 case and locked it and stuff. I think he was riding a bus.
23 I'm not positive, but I think he was riding public
24 transportation because I seen him walking and he might have
25 mentioned it and he put it in the envelope and --

1 Q. Let me stop you there. How big was the envelope?
2 Was it a small letter size envelope?

3 A. No. It was bigger. It was like -- I don't --
4 something like this (indicating.)

5 Q. Okay. We can't capture that for the record. Could
6 you estimate about how big the envelope was in inches?

7 A. I'm going to say at least about 14 inches by --
8 probably 14 by ten at least because it has -- the case fit
9 inside and it had to fit inside. So the case was, you know,
10 about 12 inches or so. Maybe ten, 12 inches.

11 Q. So you saw the individual put the gun inside the
12 envelope?

13 A. Yeah. Well, he put it in there. We put the gun and
14 the mags and everything in the case and it's a lockbox. So we
15 locked the case and then he put that in the envelope and then,
16 you know, sealed it and then just wrote on it. He said that he
17 had learned of something that if you write on there like
18 attorney privileges or something around that -- I don't know
19 the exact words -- but that the police wouldn't be able to
20 search it if you was to get pulled over or if you was to, you
21 know, out in the public or, you know, if the police was to
22 approach you or whatnot which I think he was riding the city
23 bus. So I was like okay. That makes sense.

24 Q. And how long were you together? How long was this
25 whole transaction?

1 A. From the time I picked him up until the time he left,
2 I'm going to say about 15 minutes around about maybe give or
3 take.

4 Q. While you were together and discussing this gun sale
5 did you have any discussions about licenses or permits or
6 anything like that?

7 A. Yeah. I think he had mentioned -- well, I don't know
8 how we got to talking about it, but he had -- I don't know if I
9 mentioned I had a handgun permit because I think I did because
10 I had a handgun on me at the time because I have a permit. I
11 carry one normally, but he had said -- I think that's when he
12 had told me that he was just planning on using it not to carry.
13 He was just going to keep it in the house for like home
14 protection or something like that. So...

15 Q. Okay. Now, just to clarify again what were the items
16 that you sold during that transaction?

17 A. The Springfield XD 40-caliber handgun, two mags, one
18 regular, one extended mag that came with it. I bought an extra
19 mag that I also put in. So basically the handgun, three mags
20 and the case. There would have been a generic OEM handgun
21 holster, an OEM magazine holster and the lock for the handgun
22 and the case and 12 rounds of -- or ten, 12 rounds, however
23 many it was.

24 Q. And when you sold him all these items, were the
25 rounds of ammunition inside the gun?

1 A. And the holster, too. Sorry.

2 No. The -- well, I don't remember if I -- the rounds were
3 in the magazine but they wasn't chambered and then when I sold
4 it to him I took them out of the magazine because I didn't want
5 him to get in trouble because if you have a permit -- that's
6 maybe what I asked him -- but if you didn't have a permit he
7 would have got in trouble if he would have had it loaded. So I
8 took the rounds out and just gave him the rounds and...

9 Q. Okay. I'm now going to show you Government's Exhibit
10 No. 73 for identification.

11 A. All right.

12 Q. Do you recognize that?

13 A. It looks like a Springfield XD 40-caliber.

14 Q. Have you previously looked at this before?

15 A. I have.

16 Q. Do you have the bill of sale?

17 A. Yeah. I do. I got an extra copy in my pocket.

18 Q. Did you -- have you previously compared the bill of
19 sale, the serial number on the bill of sale?

20 A. Yeah. I looked at it.

21 Q. The serial number on this exhibit?

22 A. I did.

23 Q. Okay. I'm going to show you Government's Exhibit No.
24 70. Do you recognize that?

25 A. Yeah. It looks like that's the 40-caliber XD

1 extended mag.

2 Q. And is there anything else included --

3 A. Oh, yeah.

4 Q. -- in this exhibit?

5 A. A couple of rounds. Looks like -- from here looks
6 like six rounds of 40-caliber ammunition. I looked at it
7 before. So yeah.

8 Q. And is that the same or similar to the rounds that
9 you included as part of this gun sale?

10 A. It looks like the same. No way to verify, but it
11 looks like the same type of ammunition I would have bought for
12 it and added.

13 Q. I'm showing you Government's Exhibit No. 101 for
14 identification. Do you recognize that?

15 A. The mag? Small mag? Is that the -- what's the thing
16 on the -- what's the thing on the right? I can't really see
17 from here. I recognize the magazine.

18 MR. SCHNEIDER: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. SCHNEIDER: Thank you.

21 BY THE WITNESS:

22 A. Yeah. That's the magazine and those -- well, I
23 didn't know what that was. That's the bullets.

24 BY MR. SCHNEIDER:

25 Q. And now showing you Government's Exhibit No. 103 for

1 identification. Do you recognize that?

2 A. Yeah. That's the -- another extended mag 40-caliber
3 for the XD.

4 Q. And are these three magazines that you've looked at
5 which is Government's Exhibit No. 70, 101 and 103, are those
6 the same or similar to the magazines that you included as part
7 of this gun sale?

8 A. Yeah. They would have been the exact same type.

9 Q. And you compared the serial number on the bill of
10 sale to the serial number in Exhibit No. 73?

11 A. For the handgun I did. It was the same.

12 MR. SCHNEIDER: Pass the witness, Your Honor.

13 MR. BOYD: No questions of this witness, Your Honor.

14 THE COURT: You may step down, sir, and you may be
15 excused.

16 THE WITNESS: All right.

17 MR. SCHNEIDER: The government calls Deborah Greeley.

18 (The witness was sworn.)

19 DIRECT EXAMINATION

20 BY MR. SCHNEIDER:

21 Q. Good afternoon, Ms. Greeley.

22 A. Good afternoon.

23 Q. Would you please introduce yourself to the jury?

24 A. My name is Deborah Greeley. I'm an associate from
25 Walmart. I live in the [REDACTED] area. [REDACTED] and

1 [REDACTED] to be specific in Texas.

2 Q. Now, you said you're employed by Walmart?

3 A. That's correct.

4 Q. How long have you been employed by Walmart?

5 A. Ten years.

6 Q. And what is your position at Walmart?

7 A. I'm an asset protection coordinator.

8 Q. How long have you been doing that for Walmart?

9 A. Seven and a half years.

10 Q. And in that position what are your responsibilities?

11 A. To protect all the assets of the company which
12 includes the building, the fixtures, merchandise, the money,
13 the people regarding just safety issues and the reputation of
14 Walmart.

15 Q. And do you handle one store or various different
16 stores?

17 A. I am assigned specifically to one store but I also
18 oversee specific issues in about ten stores.

19 Q. Do you have a home store where you're based out of?

20 A. Yes. My home store right now is in [REDACTED]
21 Texas. Previous to that I was in Plano, Texas.

22 Q. And in July of last year 2011 what was your home
23 store?

24 A. It was in Plano, Texas, address 425 North Coit Road
25 in Plano.

1 Q. Now, are you one of the people that has care, custody
2 and control of the video surveillance system at that Walmart?

3 A. Yes.

4 Q. Are you familiar with the system?

5 A. Yes.

6 Q. And do you know where it records to?

7 A. Yes.

8 Q. Where is that?

9 A. It records to memory blades that are located at the
10 rear of the facility and also at our home office in
11 Bentonville.

12 Q. And where is the hard drive for that located?

13 A. It's in the store in the back offices.

14 Q. And are you familiar with how to operate that?

15 A. Yes.

16 Q. And when you watch a video from that video
17 surveillance system, can you tell looking at the video whether
18 it came from Walmart?

19 A. Yes. There are indicators that are consistent with
20 all Walmarts.

21 Q. Like what?

22 A. Like the fixtures, the way the registers are.
23 There's logos all over throughout the store, designing. All of
24 those types of indicators will tell you that it's from Walmart.

25 Q. And are you familiar with the layout of your own home

1 store in Plano?

2 A. Yes.

3 Q. Does Walmart keep that video surveillance in the
4 regular course of its business?

5 A. Yes.

6 Q. Is it part of Walmart's business to accurately record
7 the public places and areas inside and outside the store
8 including the parking lot?

9 A. Yes.

10 Q. Is the surveillance video recorded at the time it's
11 represented on the video itself through a time stamp or at
12 least near that time?

13 A. Yes.

14 Q. Okay. I'm going to show you Government's Exhibit No.
15 45. This is a -- can you tell us what that is?

16 A. That is a recorded CD.

17 Q. And is that from the video surveillance?

18 A. Yes. It is.

19 Q. Have you previously reviewed the entire contents of
20 this CD?

21 A. Yes.

22 Q. Let me just clarify. Is this copy -- is this a copy
23 of a CD or is this the CD from Walmart that you provided?

24 A. It is a copy.

25 Q. Okay.

1 MR. SCHNEIDER: Your Honor, we move Government's Exhibit
2 No. 45 into evidence.

3 MR. BOYD: No objection.

4 THE COURT: It's admitted.

5 (Exhibit(s) admitted: G45)

6 MR. SCHNEIDER: And we're now going to play some clips
7 from that security camera video at Walmart if we can start with
8 Clip No. 1.

9 (Video played.)

10 MR. SCHNEIDER: And if we could just pause it for one
11 second.

12 BY MR. SCHNEIDER:

13 Q. Ms. Greeley, what does the angle of that video show?

14 A. That is the angle looking straight down upon Register
15 17.

16 MR. SCHNEIDER: Okay. And if we can continue.

17 (Video played.)

18 SCHNEIDER: And if we can play the next clip.

19 (Video played.)

20 BY MR. SCHNEIDER:

21 Q. Now, Ms. Greeley, what was that last clip a video
22 angle of?

23 A. That was looking down on the vestibule going out from
24 the grocery side of the store.

25 MR. SCHNEIDER: And if we can play the next clip.

1 (Video played.)

2 BY MR. SCHNEIDER:

3 Q. And, Ms. Greeley, what was that an angle of?

4 A. That was an overhead shot from the door camera
5 exiting the building.

6 MR. SCHNEIDER: And the next clip, please.

7 (Video played.)

8 BY MR. SCHNEIDER:

9 Q. And, Ms. Greeley, what was that a view of?

10 A. That is a picture of the outside of the store looking
11 at the crosswalk from the door that was previously in the
12 overhead shot.

13 MR. SCHNEIDER: And finally the last clip.

14 (Video played.)

15 BY MR. SCHNEIDER:

16 Q. Now, Ms. Greeley, can you tell from the video what
17 time this is occurring?

18 A. Yes. 12:28 p.m. -- or in the morning. I'm sorry.
19 12:28 in the morning.

20 Q. And on this last clip what is that an angle video --
21 the video. What angle is that?

22 A. It's a rooftop shot of the parking area, specifically
23 Row 5.

24 Q. And for all the clips that you viewed today in court,
25 are they fair and accurate videos and representations of the

1 way the Walmart Plano store looks, the one that is your home
2 store?

3 A. Yes.

4 Q. Ms. Greeley, are you familiar with the way that
5 transactions -- sale transactions are recorded with Walmart?

6 A. Yes.

7 Q. So if I go in to buy something at Walmart, are my
8 transactions recorded?

9 A. Yes. All transactions are recorded electronically.

10 Q. And are you one of the people that has care, custody
11 and control of the system that records the transactions in
12 Walmart?

13 A. Yes.

14 Q. You're familiar with the system?

15 A. Yes.

16 Q. And where does it record those transactions?

17 A. They are recorded into the database for Walmart that
18 is store specific. It's a computer system that is -- each
19 store has its own specific system inside the store.

20 Q. And you are familiar with the Walmart Plano for
21 the -- your home store, your specific store in Plano?

22 A. Yes.

23 Q. And can you tell looking at a printout or a receipt
24 from the Walmart Plano store whether it came from that specific
25 store?

1 A. Yes.

2 Q. Does Walmart keep all this transaction data in its
3 regular course of business?

4 A. Yes.

5 Q. Is it part of Walmart's business to accurately record
6 the sales and transactions that happens in its stores?

7 A. Yes.

8 Q. And are these sales and transactions recorded at the
9 time or near the time of the sale?

10 A. Yes.

11 Q. Okay. I'm going to show you Government's Exhibit No.
12 44 for identification. Do you recognize that?

13 A. Yes.

14 Q. What is it?

15 A. That is an electronic copy of a receipt.

16 Q. And did you print that copy out?

17 A. Yes.

18 Q. And you were able to print it out from the same
19 system you've been describing to us?

20 A. Yes.

21 Q. And is it from the Walmart Plano store that's your
22 home store?

23 A. Yes. It is.

24 Q. And how can you tell that from looking at the
25 receipt?

1 A. At the very top where it says "ST" and it has a
2 number 3482. That is the specific facility number for that
3 store.

4 Q. And I'm going to show you Government's Exhibit No. 77
5 for identification. And what is that?

6 A. That is a receipt that is generated from a register
7 at Walmart.

8 Q. And does that relate to the Walmart store in Plano?

9 A. Yes.

10 Q. And how can you tell looking at that receipt?

11 A. Two indicators. The address is the correct address.
12 Also the ST number 3482 is the same.

13 Q. And that's a unique number for that store?

14 A. Yes.

15 Q. And then looking at Government's Exhibit No. 96 for
16 identification. Do you recognize that?

17 A. Yes.

18 Q. And what is it?

19 A. That is a register generated receipt for Walmart.

20 Q. And can you tell the same way you did from the prior
21 receipt?

22 A. Yes.

23 Q. Does it have the same store number?

24 A. Yes. It does.

25 Q. Okay.

1 MR. BOYD: No objection, Your Honor.

2 THE COURT: They're admitted.

3 MR. SCHNEIDER: Your Honor, the government moves
4 exhibits -- Government's Exhibit Nos. 44, 77 and 96 into
5 evidence.

6 THE COURT: They're admitted.

7 (Exhibit(s) admitted: G44, G77, G96)

8 BY MR. SCHNEIDER:

9 Q. And I think we have Government's Exhibit No. 44 on
10 video that we can put it up on the screen.

11 Now, Ms. Greeley, starting with Government's Exhibit No.
12 44, that's the receipt that you said you generated from your
13 computer?

14 A. Yes.

15 Q. And can you tell us when that sale occurred?

16 A. You've cut that off from my -- 25 minutes, 32 seconds
17 after midnight.

18 Q. Now, does this receipt that we're looking at on the
19 screen now correspond to the video -- surveillance video that
20 we previously played here in court?

21 A. Yes.

22 Q. Okay. Now, turning to the items on the receipt. I'm
23 going to show you some items for identification. Showing you
24 Government's Exhibit No. 129. Do you recognize that?

25 A. Yes.

1 Q. And do you see that on the receipt anywhere in front
2 of you?

3 A. It is the first item listed.

4 Q. And have you previously examined this exhibit
5 Government's Exhibit No. 129 before?

6 A. Yes.

7 Q. Have you had a chance to review the box?

8 A. Yes.

9 Q. Is there anything on the box that helps you match up
10 this item to the receipt?

11 A. The universal product code.

12 Q. And can you briefly describe for the jury what that
13 is?

14 A. Universal product code is a 12 digit number that is
15 specific to all items that are sold in the United States.
16 Every item has its own unique universal product code consisting
17 of the 12 numbers. On our system we use placeholders at the
18 first but the item there after the first zero because that's a
19 placeholder.

20 Q. So on this receipt can you explain the first item
21 that says cookware is that the description of the item?

22 A. Yes.

23 Q. And then the next column would be what?

24 A. The universal product code.

25 Q. And then the last item in the last column?

1 A. Is the price. The current retail price of that item.

2 Q. Okay. And those were prices as of July 26th of 2011?

3 A. Yes.

4 Q. Okay. I'll now show you Government's Exhibits 126,

5 127 and 130 for identification. And do you recognize that?

6 A. Yes.

7 Q. And does this match any of the items on the receipt?

8 A. It is consistent with the pressure cooker the second
9 item.

10 Q. Now, you don't have a UPC for this, do you?

11 A. That's correct.

12 Q. How were you able to match this to Item No. 2 on the
13 receipt?

14 A. Through the video you can see the item itself. When
15 the box is turned sideways, you get a picture of the item which
16 is consistent with that particular pressure cooker.

17 Q. Are you also familiar with -- generally familiar with
18 the stock items that Walmart stocks?

19 A. Yes.

20 Q. And have you been able to find that item in stock?

21 A. Not at this time. It has gone out of stock. It has
22 sold through.

23 Q. Okay. Now, looking at -- and looking at Exhibit No.
24 130, is that related to the pressure cooker that you just
25 looked at?

1 A. Yes.

2 Q. And can you tell that from looking at the --

3 A. From the picture.

4 Q. -- booklet itself?

5 A. Uh-huh. Yes.

6 Q. Now I'm going to show you Exhibit No. 97. That has
7 multiple items in it, but looking at Exhibit No. 97 does that
8 match to any of the items on the list?

9 A. Yes. It is the third item the quick change knife.

10 Q. And there's no packaging on this, is there?

11 A. That's correct.

12 Q. So you weren't able to match up a UPC code?

13 A. Not with that particular item.

14 Q. Were you able to match what the item looks like to
15 products that Walmart keeps in stock and match that UPC?

16 A. Yes. I was.

17 Q. Was it the same?

18 A. Yes. It was.

19 Q. Okay. And now I'm going to show you Exhibits 107 and
20 81. And do you recognize those items?

21 A. Yes.

22 Q. And what are they?

23 A. Electrical tape and the packaging that it comes in.

24 Q. And have you been able to check the UPC code on the
25 packaging for the electrical tape?

1 A. Yes.

2 Q. Does it match the receipt?

3 A. Yes.

4 Q. The next item on the receipt. What is that?

5 A. It is batteries.

6 Q. Showing you Government's Exhibit No. 105 for

7 identification. Do you see a package of batteries in that?

8 A. Yes.

9 Q. Have you been able to check the UPC code on that?

10 A. Yes.

11 Q. Does that match the receipt?

12 A. Yes. It does.

13 Q. And what was the next item on the receipt?

14 A. A bed skirt queen size.

15 Q. Showing you Government's Exhibit No. 140 for

16 identification. Do you recognize that?

17 A. Yes.

18 Q. Have you checked the UPC code on this item?

19 A. Yes.

20 Q. What is it?

21 A. It is consistent in the exact same as on the receipt.

22 Q. As the bed skirt?

23 A. Yes.

24 Q. And the next item on the receipt?

25 A. It says each on the receipt.

1 Q. Okay. I'm going to show you Government's Exhibit No.
2 87. Do you recognize that exhibit?

3 A. Yes.

4 Q. And what is it?

5 A. Drill bits.

6 Q. Have you checked the UPC code on this item on the
7 packaging?

8 A. Yes. I have.

9 Q. And does it match the receipt?

10 A. Yes. It is.

11 Q. The next item on your receipt?

12 A. CDED drill.

13 Q. Okay. I'm going to show you Government's Exhibits 85
14 and 86 for identification. Do you recognize that?

15 A. Yes.

16 Q. And what is it?

17 A. It is the drill and the box that it came in.

18 Q. Have you checked --

19 A. Packaging.

20 Q. Have you checked the box in this case?

21 A. Yes.

22 Q. And looked at the UPC?

23 A. Yes.

24 Q. Does the UPC match?

25 A. Yes. It does.

1 Q. Does the drill appear to come from the box?

2 A. Yes.

3 Q. And the next item on the receipt?

4 A. Clock.

5 Q. How many clocks are listed on the receipt?

6 A. Four.

7 Q. Showing you Government's Exhibits 89, 57, 58 and 88.

8 Have you examined all those before?

9 A. Yes.

10 Q. And what are they?

11 A. They're an exact match for the items on the -- listed
12 on the receipt.

13 Q. What are these items?

14 A. Clocks.

15 Q. And you've checked the UPC codes on each of these for
16 clocks?

17 A. Yes.

18 Q. And they match?

19 A. Yes.

20 Q. And what is the next item on the receipt?

21 A. Batteries.

22 Q. Showing you Government's Exhibit 59. Do you
23 recognize that?

24 A. Yes.

25 Q. And are these batteries?

1 A. Yes.

2 Q. Have you checked the UPC code on this?

3 A. Yes. I did.

4 Q. And did it match the receipt?

5 A. Yes. It did.

6 Q. And what is the next item on the receipt?

7 A. 18 gauge red wire.

8 Q. Showing you Government's Exhibit No. 111 which has
9 objects in it. Do you see anything that matches the receipt?

10 A. Yes.

11 Q. Which is that?

12 A. On the left side there's the red wire.

13 Q. And have you previously looked at this exhibit?

14 A. Yes.

15 Q. Have you checked the UPC code on the packaging?

16 A. Yes.

17 Q. Does it match?

18 A. Yes.

19 Q. And the next item?

20 A. 16 gauge black wire.

21 Q. Okay. And this Government's Exhibit No. 60 for
22 identification. Do you recognize that?

23 A. Yes.

24 Q. And what is that?

25 A. That is the black wire.

1 Q. And did you match the UPC code?

2 A. Yes.

3 Q. And it matches the receipt?

4 A. Yes. It does.

5 Q. And what is the next item on your receipt?

6 A. Ammunition.

7 Q. Showing you Government's Exhibit 114. Do you
8 recognize that?

9 A. Yes.

10 Q. What is that?

11 A. Two boxes of ammunition.

12 Q. And have you previously looked at the UPC codes on
13 Government's 114?

14 A. Yes.

15 Q. Have you compared it to the receipt?

16 A. Yes.

17 Q. And are both of those boxes a match for the receipt?

18 A. Yes.

19 Q. And what is the next item?

20 A. 18 gauge black wire.

21 Q. Showing you Government's 111 which we've already
22 looked at. This has two items in it. You've already
23 identified the red wire. Do you see another item there that
24 matches?

25 A. Yes. The black wire.

1 Q. Have you looked at the UPC code on the packaging?

2 A. Yes.

3 Q. Does it match the receipt?

4 A. It does.

5 Q. What is the next item?

6 A. 16 gauge black wire.

7 Q. I'm showing you Government's Exhibit 61. Do you
8 recognize that?

9 A. Yes.

10 Q. Have you checked the UPC code on this item?

11 A. Yes. I have.

12 Q. What is the item?

13 A. Black wire.

14 Q. And does the UPC wire match?

15 A. Yes.

16 Q. And what is the next item?

17 A. Knife blades.

18 Q. Showing you Government's Exhibit 97. Except for the
19 packaging on this, do you recognize knife blades?

20 A. Yes.

21 Q. And this is not in the original packaging, is it?

22 A. No. It is not.

23 Q. But is the item consistent with the knife blades that
24 Walmart carries?

25 A. Yes.

1 Q. And the next item?

2 A. T-shirt.

3 Q. Showing you Government's Exhibit 135 for
4 identification. Do you recognize that?

5 A. Yes.

6 Q. What is it?

7 A. It is a NCAA T-shirt for Texas Longhorns.

8 Q. Okay. And this does not have a UPC code on it, does
9 it?

10 A. No. It does not.

11 Q. I'm showing you now Government's Exhibit No. 80. Do
12 you recognize that?

13 A. Yes.

14 Q. What is that?

15 A. That is a tag that is most commonly found on those
16 T-shirts. They are licensed for team team wear.

17 Q. Does the front of the tag say anything about the
18 product?

19 A. NCAA.

20 Q. And is there a UPC code on the tag?

21 A. Yes.

22 Q. And have you matched the UPC code on the tag to the
23 receipt?

24 A. Yes.

25 Q. And does it match?

1 A. Yes. It does.

2 Q. Next item on the receipt?

3 A. Shorts.

4 Q. I'm showing you Exhibit 145. Do you recognize any
5 shorts in that exhibit?

6 A. Yes. They are the same team wear.

7 Q. Does it match the previous exhibit the T-shirt?

8 A. Yes.

9 Q. And showing you Exhibit No. 83. Do you recognize
10 these tags?

11 A. Yes.

12 Q. The two tags here?

13 Have you previously looked at the UPC codes on these tags?

14 A. Yes.

15 Q. And did you match up one of the UPC codes to the
16 shorts?

17 A. Yes.

18 Q. And did it match?

19 A. Yes.

20 Q. And the final item on this receipt?

21 A. Is a hat.

22 Q. Showing you Government's Exhibit 146. Do you
23 recognize that?

24 A. Yes.

25 Q. What is it?

1 A. It is a Texas Longhorn team hat.

2 Q. Does that have a UPC code on it?

3 A. Not on the hat itself. No.

4 Q. But showing you again Government's Exhibit No. 83
5 which had two tags, you said you've examined both of those UPC
6 codes?

7 A. Yes.

8 Q. Was there a matching tag for the hat?

9 A. Yes.

10 Q. And finally on this receipt how much was the total
11 purchase?

12 A. \$315.05.

13 Q. And does it say how the person paid for that?

14 A. That's cut off from my view.

15 He tendered cash in the amount of \$320.

16 Q. Okay. And now we're going to take a look at 77,
17 Government's Exhibit No. 77 already in evidence. And can you
18 tell us the date and time of this receipt?

19 A. 13 minutes, 55 seconds after midnight on July 26,
20 2011.

21 Q. And how many items were purchased on this receipt?

22 A. One item.

23 Q. Was there any other items listed on the receipt?

24 A. Yes. Batteries.

25 Q. And what happened with that transaction?

1 A. The batteries were voided off.

2 Q. Okay. Now showing you Government's Exhibits 98 and
3 99 for identification. Do you recognize these items?

4 A. Yes.

5 Q. And do they relate to this receipt?

6 A. Yes. The first item on the receipt is listed Kodak
7 Play Sport and the UPC number is an exact match.

8 Q. What is the Kodak Play Sport?

9 A. It's a camcorder.

10 Q. And you've checked the UPC on the -- box on
11 Government's Exhibit No. 99?

12 A. Yes.

13 Q. And now looking at Government's Exhibit No. 77, the
14 receipt. How much was that purchase?

15 A. \$128.82.

16 Q. And does it say how that transaction was paid for?

17 A. Cash was tendered in the amount of \$140.

18 Q. Okay. And now finally looking at Government's
19 Exhibit No. 96. And looking at that exhibit can you tell us
20 when, what day and what time the transaction occurred?

21 A. That's not showing on the receipt, sir, on the
22 display.

23 That happened at 56 minutes, 47 seconds after 9:00 o'clock
24 p.m. 2100 hours.

25 Q. On what day?

1 A. July 25th, 2011.

2 Q. And how many items were purchased on this receipt?

3 A. Four.

4 Q. Okay. And what is the first item on the receipt?

5 A. It is a Trac phone 105 bundle.

6 Q. Showing you Government's Exhibits 76 and 133. Do you
7 recognize these items?

8 A. Yes.

9 Q. And what is it?

10 A. That is the packaging and the accessories for a Trac
11 phone.

12 Q. Have you checked the Trac phone box?

13 A. Yes.

14 Q. Have you looked at the UPC code?

15 A. Yes.

16 Q. Does the UPC code match the --

17 A. Yes.

18 Q. -- receipt in this case?

19 A. Yes. It does.

20 Q. Are there any other identifiers that help you match
21 this Trac phone to the receipt?

22 A. Yes. On the bottom panel of the box there is a
23 number. It will match the top number that starts 8400. It's
24 an identifier that allows them to activate that specific phone.

25 Q. So that number on that receipt is unique to this one

1 specific phone?

2 A. Yes.

3 Q. What is the next item on the receipt?

4 A. Sunglasses.

5 Q. I'm showing you Government's Exhibit 146. Do you
6 recognize that?

7 A. Yes.

8 Q. What is it?

9 A. A pair of Foster Grant sunglasses.

10 Q. And have you previously examined these sunglasses?

11 A. Yes.

12 Q. Now, this is not in the packaging, is it?

13 A. No. It is not.

14 Q. Were you able to match up a UPC code?

15 A. No. I was not.

16 Q. But do these match the brand of sunglasses?

17 A. It is consistent with the brand that was purchased.

18 Yes.

19 Q. And what is the next item on the receipt?

20 A. 60 unit card.

21 Q. It's a card for what? Can you tell?

22 A. For a Trac phone air time.

23 Q. Showing you Government's Exhibit 79 for
24 identification. Do you recognize that?

25 A. Yes.

1 Q. And does this item have a UPC code on it?

2 A. Yes.

3 Q. Have you been able to match it to the receipt?

4 A. Yes.

5 Q. Do they match?

6 A. Yes. They do.

7 Q. And finally showing you Government's Exhibit 92 for
8 identification. Do you recognize that?

9 A. Yes.

10 Q. What is this?

11 A. Acer notebook computer.

12 Q. And have you matched the packaging -- the UPC code on
13 the packaging of this to the receipt?

14 A. Yes.

15 Q. Did it match?

16 A. Yes.

17 Q. On the receipt that you have are there any other
18 identifiers that match to the receipt?

19 A. Yes. The serial number that is specific to that
20 computer is also recorded on the receipt and on the box.

21 Q. I'm sorry. I think I said 72. That was Government's
22 Exhibit 72 for identification, not 92.

23 And that's the computer you just told us about, the Acer
24 notebook?

25 A. Uh-huh.

1 MR. SCHNEIDER: Your Honor, we pass the witness.

2 MR. BOYD: No questions, Your Honor.

3 THE COURT: You may step down, ma'am. You may be excused.

4 MR. SOFER: Government calls Husam Al-Qaysi.

5 (The witness was sworn.)

6 DIRECT EXAMINATION

7 BY MR. SOFER:

8 Q. Good afternoon, Mr. Al-Qaysi.

9 A. How are you doing?

10 Q. Would you please tell the jury how old you are, sir?

11 A. [REDACTED] years old.

12 Q. And where were you born?

13 A. In [REDACTED].

14 Q. What city in [REDACTED]?

15 A. [REDACTED].

16 Q. When did you come to the United States, sir?

17 A. In August 2009.

18 Q. And can you tell the members of the jury what you do
19 for a living?

20 A. I'm driving for -- I'm cab driver.

21 Q. Okay. And do you work for a particular company?

22 A. Yeah. It's [REDACTED].

23 Q. And were you driving a taxi on -- for the [REDACTED]
24 company on July 25th, 2011?

25 A. Correct.

1 Q. Where is that company based out of and where is most
2 of your work?

3 A. That's in Dallas.

4 Q. On the evening of July 25th, 2011 were you dispatched
5 to the area of Spring Valley North of Dallas?

6 A. Yes.

7 Q. And was there a radio call or a call into your cab?

8 A. No. Radio call and they do have screen on the car
9 and they give the destination where is the customer at. And
10 they give me his number too.

11 Q. Okay. And did that customer show up?

12 A. No. I call three times. He don't answer and then I
13 call my company to cancel it.

14 Q. Okay. While you were in that same location looking
15 for that fare did somebody come to your cab?

16 A. Yeah. Because I want to get back because you must
17 pay parking if your car is safe and when I get back somebody
18 know the car. He say I call for a cab.

19 Q. Okay. So the person knocked on the door?

20 A. Yeah.

21 Q. I'm going to show you what's been marked Government's
22 Exhibit No. 153 --

23 A. Uh-huh.

24 Q. -- already in evidence.

25 A. Yes. This is the guy.

1 Q. This is the man that knocked on your cab?

2 A. Uh-huh.

3 Q. Show you 153B as well.

4 A. Uh-huh.

5 Q. Same guy?

6 A. Yeah.

7 Q. And when the defendant knocked on your cab door, did
8 you talk to him?

9 A. Yeah. I talked to him. Where are you going? He
10 said, can I get to the Walmart nearest one of here for this
11 area. I told him, yes. We have one in Plano on Coit north of
12 Coit in Plano.

13 Q. Okay. So he said he wanted to go to Walmart. Did
14 you take him to Walmart?

15 A. Yes, sir. I take him there.

16 Q. Do you recall what clothes the defendant was wearing?

17 A. The same as the pictures over here.

18 Q. Can you describe them for the members of the jury?

19 A. Yeah. It would be light like this color or light for
20 this color.

21 Q. And was there anything else in particular you noticed
22 about the type of clothing that it was?

23 A. No. He get the bags with him.

24 Q. No. No. I'm not talking about what he bought. I'm
25 asking what he was wearing.

1 A. He was wearing this same -- this same of the picture
2 over here.

3 Q. I understand.

4 A. Yeah. Near something like that.

5 Q. Okay. Did you have a conversation with him at that
6 time before you got to Walmart about where else he wanted to go
7 or no?

8 A. No. He just asked me about if he had -- if I find
9 the car if I want to go to the north of Austin or that I tell
10 him okay. I will take you there. And he say how much I
11 charge? I tell him it would be 400, 500 but he don't decide
12 first time. I said okay. And he went to the Walmart.

13 Q. Okay. And did you take him to Walmart?

14 A. Yes, sir.

15 Q. And did he go inside?

16 A. Yeah.

17 Q. Did you go with him the first time?

18 A. No.

19 Q. What happened next?

20 A. When he get inside and get out and he told me I need
21 to use my laptop, my internet. So he looking for that --

22 Q. Let me slow you down a little bit. I'm sorry.

23 A. Okay.

24 Q. But he went into Walmart?

25 A. And he get out.

1 Q. Did he have anything with him?

2 A. He said -- yes. He get some bags with him.

3 Q. Okay.

4 A. And he tell me I want to use my internet. Let's go
5 ahead. He see the McDonald and he said take me there.

6 Q. Okay. And did you take him to McDonald's?

7 A. Yes. I took him to the door. I wait till he get
8 inside and he say to come back to me 11:00 o'clock.

9 Q. Now, was this all being paid on the meter of the cab
10 at this point?

11 A. Yes. And he give me \$20.

12 Q. Did you leave him at McDonald's?

13 A. Yeah. Yeah. It would be silly and he give me 20 and
14 he say come back at 11:00 o'clock.

15 Q. Okay. And did you do that?

16 A. Yes, sir.

17 Q. Did you ask him for his phone number or anything to
18 get in touch with him?

19 A. Yeah. I tell him, what's your number? I say you
20 find me here. I'm waiting for you in McDonald's.

21 Q. He wouldn't give you his number?

22 A. No.

23 Q. Did there come a time when you went back to
24 McDonald's to pick him up?

25 A. Yes. At 11:00 o'clock. 11:00, something like that.

1 Q. Okay. Can you describe for the members of the jury
2 what happened next?

3 A. After that if he can -- I waiting for him and he gets
4 some stuff on the floor. On -- he sit on the floor in the
5 front of the door.

6 Q. Are you talking about in front of McDonald's?

7 A. At McDonald. And he left some stuff on the street
8 and other stuff he picking up in the car and he don't get
9 inside. He talk by the phone. Waiting for ten minutes and
10 then he said let's go back to the Walmart.

11 Q. He wanted to go back to Walmart?

12 A. Yes.

13 Q. And did you take him back to Walmart?

14 A. Exactly.

15 Q. Okay. And what happened there?

16 A. And then he -- he get in the Walmart. I waiting for
17 ten minutes, 15 minutes. I say, okay. While I'm doing in my
18 cab let me to see the TV or something I buy it from the
19 Walmart, you know, and I'm just around of him. I see him go to
20 the left or right in Walmart and then he told me I am done. I
21 tell him, okay. I went with him to the --

22 Q. Let me again slow you down a little bit. So he went
23 in. You got tired of waiting for him. Would that be fair to
24 say?

25 A. Say again.

1 Q. He went in. You got tired of waiting for him
2 outside?

3 A. Yes. And he late.

4 Q. Okay.

5 A. I come back to make a round in Walmart. I don't --

6 Q. Shopping?

7 A. No. To see something just to spend the time.

8 Q. Okay.

9 A. So I saw him. He get left right there and I don't
10 talk with him but then -- and then he get all his stuff with
11 the cart. I say I'm ready. Let's go.

12 Q. Okay. And where did you go? What part of Walmart
13 did you go to?

14 A. First he go into the -- from -- from electric stuff.

15 Q. Electric stuff?

16 A. Yeah. From the -- from the TV and, you know, about
17 Walmart inside. They pay cash. And then we take this stuff
18 with the cashier. I was with him and he pay all.

19 Q. So you waited at the cashier with him?

20 A. Yes.

21 MR. SOFER: Okay. And if we could play what's in evidence
22 as Government's Exhibit No. 45, Clip 1, please.

23 (Video played.)

24 BY MR. SOFER:

25 Q. As this is playing, were you present during this

1 time?

2 A. Uh-huh. Yeah. This for him.

3 Q. This yellow box here?

4 A. Yes. Yes.

5 Q. Was that his?

6 A. Yeah. The yellow bags and more stuff, something that
7 stuff. I pick him up with him.

8 Q. Okay. Now, there's somebody walking around --

9 A. Yeah.

10 Q. -- at the top here. Do you see up there where I
11 indicated?

12 A. Yeah.

13 Q. Do you know who that is?

14 A. That's me.

15 Q. Do you recognize your foot?

16 A. Yep.

17 Q. You looked at this video before, right?

18 A. Yeah. Yeah.

19 Q. You know who's going to show up?

20 A. Exactly.

21 Q. Do you see these clocks being purchased?

22 A. Yes. Be three or four. I don't make sure.

23 Yeah. He putting this credit through.

24 Q. Was he talking to you during this time as well while
25 he was in the store?

1 A. He talk with the ladies.

2 Q. Okay.

3 A. But I stand by just so he can get finished.

4 MR. SOFER: We can stop it. Let's play Clip No. 2.

5 (Video played.)

6 MR. SOFER: Thank you.

7 BY MR. SOFER:

8 Q. Do you recognize who's walking out of the store now?

9 A. Yeah.

10 MR. SOFER: Pause it.

11 BY THE WITNESS:

12 A. My car because so far from the gate.

13 BY MR. SOFER:

14 Q. This fellow here?

15 A. Yeah.

16 Q. Is that you?

17 A. Yeah. That's me.

18 Q. Is this the defendant?

19 A. Uh-huh.

20 Q. Indicating the individual towards the center of the
21 screen?

22 A. Yeah.

23 MR. SOFER: Okay. Play the next clip.

24 (Video played.)

25 BY THE WITNESS:

1 A. That's my car.

2 MR. SOFER: Can you pause it, please?

3 BY THE WITNESS:

4 A. Yeah. [REDACTED].

5 BY MR. SOFER:

6 Q. This is the vehicle you were driving that evening?

7 A. Yes.

8 Q. And this is the vehicle that ultimately you and --

9 A. Uh-huh.

10 Q. -- the defendant drove from and to Walmart in,

11 correct?

12 A. Yep.

13 MR. SOFER: Can you play the two in the middle, please?

14 (Video played.)

15 BY MR. SOFER:

16 Q. Again, this individual here?

17 A. Uh-huh.

18 Q. In the screen now wearing this shirt?

19 A. Yep.

20 Q. And the shorts and the flip flops. Is that you?

21 A. Yeah. That's me.

22 MR. SOFER: Can you play the last clip, please?

23 (Video played.)

24 BY MR. SOFER:

25 Q. And you were with the defendant there again, correct?

1 (Video played.)

2 BY THE WITNESS:

3 A. Yeah. We move there.

4 BY MR. SOFER:

5 Q. Is that you and him leaving the store?

6 A. Yeah.

7 Q. Okay. I want to just show you some items real quick.

8 A. Uh-huh.

9 Q. If I can have Government's Exhibit No. 129 --

10 A. Yeah.

11 Q. -- for identification. Is that the box you were
12 talking about? It looks like the box that you saw on that
13 particular day?

14 A. Yeah.

15 Q. And if I could have 58, 59, 88 and 89. Are these
16 items?

17 A. Yes.

18 Q. All look like the clocks?

19 A. Yes, sir.

20 Q. That were rolling across the cash register?

21 A. Yep.

22 Q. Finally I'm going to show you what's been marked
23 Government Exhibit No. 146 for identification.

24 A. Yes. That's hat.

25 Q. Is that?

1 A. The hat is beside the cashier. He take it off. He
2 put that with the stuff.

3 Q. And he bought a bunch of other stuff as well,
4 correct?

5 A. Yes.

6 Q. Do you recall how he paid for all of this?

7 A. I think it be more for 200 for more for that but he
8 have a gift card and he does it so he said we keep that. We
9 pay for cash.

10 Q. Okay.

11 A. And he pay for cash.

12 Q. After you left Walmart did you get in that cab we saw
13 in the video in your cab? Did you get in the cab with him
14 after Walmart?

15 A. After Walmart we got start to go to the Killeen, but
16 he don't tell me Killeen first. He said let's go to the
17 Austin. The ride from on 35 east.

18 Q. Okay. And so first he said he wanted to go to Austin
19 or somewhere 35?

20 A. Yeah. But he get a map.

21 Q. Okay.

22 A. And he find it. He said hold on. Let me check up.
23 And he check out the map and he tell me go to the 35 south.

24 Q. Okay. And did he ultimately tell you to get off of
25 35 south and go somewhere else?

1 A. Yes.

2 Q. And was that Killeen? Is that what you said before?

3 A. Yeah. Killeen to be the last final one when I drop
4 him off.

5 Q. By the way, was your meter running this whole time?

6 A. No. Because you have a deal \$400.

7 Q. For how much?

8 A. 400. I tell him 400, 400, \$500.

9 Q. Okay.

10 A. And at midnight because they don't have enough gas
11 and he pay for the credit card for the gas.

12 Q. Okay. So it was the money plus the gas?

13 A. Yes.

14 Q. And on the drive down south did you talk to him?

15 A. Yes. He talk with me but I want to turn the radio.
16 He say, no. No. Turn it off. I don't like the music or I
17 don't like to hear anything. I say it's okay. So I talk to
18 you. And we don't talk anything and he get mad because he talk
19 by the phone. And he don't talk after the middle of the road
20 and he go and start to talk with me.

21 Q. Okay. Did there come a time when he -- well, did you
22 ever tell you his name during your conversations with him? His
23 name? Did he ever tell you?

24 A. Talk about -- talk about -- you mean Bin Laden he
25 talk with me?

1 Q. No. No. Did he ever talk to you about his name?

2 A. No.

3 Q. Okay.

4 A. I said where are you from? He say my parents from
5 Jordan I think.

6 Q. Okay. And you just mentioned Bin Laden. Did he
7 mention something about Bin Laden to you?

8 A. No. He said think you think they kill him or
9 something like that. I say, man. He's dying. This doesn't
10 matter what this man good or not. It's over right now. And he
11 told me how can I read the Koran? How can you -- can you teach
12 me because I'm Muslim, too. I tell him okay. If you get CD in
13 your radio you can repeat that more every day you'll be fine.
14 That's it. And he don't talk again.

15 Q. To memorize the Koran?

16 A. Yes. Correct.

17 Q. Okay. Now, did there come a time when you arrived in
18 Killeen?

19 A. Huh?

20 Q. In Killeen, Texas.

21 A. Yes.

22 Q. Did you arrive there?

23 A. No. First time I'm driving to I think I'm going to
24 Austin.

25 Q. Okay.

1 A. And he say exit. I tell him what? He say let's go
2 to this side over here. We look around because come to Killeen
3 you know about all the hotel around he say, okay. Make turn.
4 I make a turn. He checked all the hotels.

5 Q. Okay. So you drove back and forth looking for a
6 hotel?

7 A. Where the hotel I drop him off before that is traffic
8 light and make turn. There's many of hotels there. And he
9 don't decide that and he said get back and when we arrive in
10 this hotel he say, okay. I'm going to stay here.

11 Q. Okay.

12 A. I take him there.

13 Q. I'm going to show you what's been marked Government's
14 Exhibit No. 47 for identification.

15 A. Uh-huh.

16 Q. Have you watched this video? I'm sorry. Have you
17 watched this CD?

18 A. Yep.

19 Q. Okay. And did you have an opportunity to see whether
20 or not you were on this CD?

21 A. Yes.

22 Q. Is this a CD of you going to that hotel -- of you
23 walking into the hotel?

24 A. Yep.

25 Q. And do you see the defendant as well on this CD

1 walking into the hotel?

2 A. Exactly.

3 Q. Okay. And that happened at about what time in the
4 morning? Do you remember?

5 A. I think because three hours to be between 2:30, 3:00
6 o'clock in the morning.

7 Q. Okay. It was early morning hours?

8 A. Yeah.

9 Q. Could it have been 3:30 in the morning?

10 A. Yeah. 3:30. It would be 3:00, 3:30, something like
11 that.

12 Q. Okay. When you dropped him off, can you tell the
13 jury what happened?

14 A. Okay. We -- drop him off at the hotel you mean?

15 Q. Yes, sir.

16 A. Okay. Hotel I drop him off. He get outside. After
17 three minute I get out, follow him and he talk with that --
18 from the guys from reception and they tell him if you want to
19 stay for -- till 5:00 o'clock it will be more cheaper than
20 charge you for whole day. He say no. I must get it right now.
21 I don't have -- and he give him the money.

22 Q. How did he pay? Do you know?

23 A. Yeah. Cash. And he give me the gift card and \$200
24 more.

25 Q. Okay. So he gave you your payment?

1 A. Yeah. And he left -- we left together. We till
2 around in the back side from the door.

3 Q. Let's just slow you down a little bit. Left from the
4 lobby area?

5 A. The lobby.

6 Q. And where did you go?

7 A. I make a turn around at the hotel in the back side.

8 Q. Okay.

9 A. And I left him and he get his stuff but some stuff he
10 put it in the cab and he said get this stuff in the back side
11 if you don't mind help me and he get the stuff on the cab and I
12 don't know what his...

13 Q. Okay. About how much stuff did -- how many bags did
14 he bring up?

15 A. It would be seven, seven, eight bags, something like
16 that. I put them all on the door because he must open the door
17 and get back and he say I take care for that.

18 Q. Was the defendant wearing anything during the time
19 that you saw him?

20 A. No. Just his -- as far as the bags.

21 Q. Did you ever see him with a backpack?

22 A. Yeah. Backpack's be his laptop I've seen and the
23 map.

24 Q. Okay.

25 A. He put them behind me but I do know it's dark and I

1 can't -- it's not my stuff. Not my business --

2 Q. Okay.

3 A. -- to check out what's going on.

4 MR. SOFER: Pass the witness, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. BOYD:

7 Q. Mr. Al-Qaysi, my name is Zachary Boyd. Am I saying
8 your name correct?

9 A. Husam Al-Qaysi. That's right.

10 Q. Okay. Al-Qaysi?

11 A. Yes.

12 Q. Okay, sir. I'll try to keep it straight. Okay?

13 A. Okay.

14 Q. At what time did you have to begin work the next day?

15 A. I don't sleep. I get back when I drop him. I get
16 back because I have customer. He want to go to work to his
17 apartment and 7:00 o'clock in the morning. So I get back in
18 6:00 o'clock and wait 30 minute, sleep on in his room beside
19 his complex until he wake up. He call me are you ready? I say
20 yes.

21 Q. And so that's when -- you made Mr. Abdo aware that
22 you had --

23 A. I don't know his name.

24 Q. You made --

25 A. I don't know his name. They tell me the customer. I

1 told yes.

2 Q. Well, you -- that would be confusing to the jury,
3 sir. Do you understand that?

4 A. Okay.

5 Q. Okay. So the first customer you're talking about
6 that I first asked you a question about --

7 A. Uh-huh.

8 Q. -- is someone other than Mr. Abdo, correct?

9 A. What do you mean? Say again.

10 Q. The customer that you just spoke about.

11 A. Yes.

12 Q. About having a fare at 6:00 o'clock on the 27th of
13 July.

14 A. Yeah.

15 Q. That was a fare at what location? Was that back in
16 the Dallas area?

17 A. Yes.

18 Q. Okay.

19 A. He's in -- he's -- he's Indian guys and he was in
20 the --

21 Q. Okay. And originally with respect to the fare that
22 you took from the Dallas/Fort Worth area to the Killeen area?

23 A. Uh-huh.

24 Q. Originally he wanted to go to Edinburg but you
25 couldn't because you had that 6:00 o'clock in the morning fare

1 and so you told him you'd take him to Austin instead because
2 that would let you come back to Dallas, right?

3 A. No. He don't tell me go to -- where he's going. He
4 said let's go to the 35 east south. I don't know where he's
5 going but I have enough time 6:00 o'clock to get back because I
6 driving all the time to the Austin and Houston and so I know
7 how far is it.

8 Q. But you knew you couldn't make it to Houston and get
9 back, right?

10 A. But Houston -- Austin or Houston you say?

11 Q. Just now I just said Houston.

12 A. Houston? Houston be five hours.

13 Q. You couldn't make it back, right?

14 A. Yeah. I stay there or I coming back but to be late.

15 Q. Okay. And you couldn't make it to Edinburg, Texas
16 either and get back, could you?

17 A. Where you come from?

18 Q. From Dallas to Edinburg.

19 A. Oh, Dallas?

20 Q. You couldn't make it from Dallas to Edinburg and
21 back?

22 A. I don't know what it will be.

23 Q. Okay. Thank you, sir.

24 A. You're welcome.

25 MR. SOFER: No questions, Your Honor. May we excuse the

1 witness?

2 THE COURT: Yes. Mr. Al-Qaysi, you may be excused.

3 We'll take our afternoon recess at this point, ladies and
4 gentlemen.

5 LAW CLERK: All rise.

6 (Jury exited the courtroom at 3:19.)

7 LAW CLERK: Court will stand in recess for 20 minutes.

8 (A break was taken from 3:19 to 3:40.)

9 LAW CLERK: All rise.

10 (The jury entered the courtroom at 3:40.)

11 THE COURT: Be seated, everyone.

12 MR. SOFER: Your Honor, the government calls Aaron
13 Bernardo.

14 (The witness was sworn.)

15 DIRECT EXAMINATION

16 BY MR. SOFER:

17 Q. Good afternoon, Mr. Bernardo. Would you please tell
18 the members of the jury how old you are?

19 A. I'm 19.

20 Q. And where are you presently employed?

21 A. America's Best Value Inn in Killeen.

22 Q. And can you tell us where that is located in Killeen?
23 The address?

24 A. 1100 South Fort Hood Street.

25 Q. And how long have you been working at that hotel,

1 sir?

2 A. Almost a year and a half.

3 Q. Tell the members of the jury what hours you work.

4 A. 9:00 p.m. to 5:00 a.m.

5 Q. And were you working that late shift in late July of
6 2011?

7 A. Yes, sir.

8 Q. Among your duties do you have care, custody and
9 control of the surveillance system in the America's Best Value
10 Inn when you're working there at night?

11 A. Yes, sir.

12 Q. And are you familiar with that surveillance system?

13 A. Yes.

14 Q. Where does the recording actually record to if you
15 know?

16 A. It records to a hard drive on a computer inside the
17 office.

18 Q. Okay. And that's the office outside of which you
19 work, correct?

20 A. Yes, sir.

21 Q. Can you tell looking at a video whether it came from
22 the hotel surveillance system?

23 A. Yes, sir.

24 Q. And does the hotel keep the video surveillance in the
25 regular course of its business?

1 A. Yes.

2 Q. Is it part of the hotel's business to accurately
3 record the public places and areas both inside and outside the
4 hotel?

5 A. Yes, sir.

6 Q. And does the surveillance video record at or near the
7 time represented on the video itself?

8 A. Yes.

9 Q. I want to show you what's been marked Government
10 Exhibit No. 47 -- it's a disk -- for identification and ask you
11 if you recognize it?

12 A. Yes, sir.

13 Q. How do you recognize it?

14 A. It has my initials and the date.

15 Q. Okay. Does Government's Exhibit No. 47 contain the
16 video clips or some video clips from the Best Value Inn
17 security system that you just described?

18 A. Yes, sir.

19 Q. And did you recognize the camera angles and video
20 angles when you watched it from being inside the hotel?

21 A. Yes, sir.

22 Q. And do those images fairly and accurately represent
23 the hotel and the areas of the surveillance camera that the --
24 the area of the surveillance cameras that it's usually focused
25 on?

1 A. Yes.

2 MR. SOFER: At this time the government offers Government
3 Exhibit No. 47 for identification into evidence.

4 MR. BOYD: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Exhibit(s) admitted: G47)

7 BY MR. SOFER:

8 Q. Okay. We're going to play a couple of clips from
9 this. Well, let's -- yeah. Let's hold off there for one
10 second. I want to direct your attention to July 26, 2011 at
11 about 3:30 in the morning. Did there come a time when you
12 checked a guest into the hotel at that date and time?

13 A. Yes, sir.

14 Q. And do you see that man here in the courtroom
15 today -- well, strike that.

16 Show you what's been marked Government Exhibit No. 153A.
17 Do you recognize that individual?

18 A. In the picture, yes.

19 Q. Okay. Who is that -- is that the man who checked
20 into the hotel at the time and date that I just pointed to?

21 A. Yes, sir.

22 Q. Is the same true for 153B?

23 A. Yes, sir.

24 Q. Do you recall what it is that the defendant was
25 wearing when he came into the hotel?

1 A. He was wearing scrubs.

2 Q. When you say scrubs, what do you mean by that?

3 A. Like nursing scrubs.

4 Q. Okay. Do you remember what color they were?

5 A. Tannish.

6 Q. Do you recall if he came into the hotel alone?

7 A. At first he did and then someone walked in after him.

8 Q. Were you able to see how he arrived at the hotel?

9 A. All I saw was a car pull up. As far as, you know, if
10 it was his or not, I wasn't too sure.

11 Q. Okay. You weren't paying attention to the outside?

12 A. Yes, sir.

13 MR. SOFER: Now, if we can, please play the clips from
14 Government's Exhibit No. 47. Let's start with Clip 1.

15 (Video played.)

16 BY MR. SOFER:

17 Q. Now, as it's playing does Clip 1 here represent --
18 what -- it represents what part of the hotel, sir?

19 A. The lobby.

20 Q. And where is the place where a guest would check into
21 the hotel, sir?

22 A. The lobby, front desk.

23 Q. Do you see an individual walking in at this time at
24 the video?

25 A. Yes.

1 Q. Was that the individual you described before the
2 defendant in this case?

3 A. Yes, sir.

4 MR. SOFER: Okay. Clip 1 again.

5 Let's play Clip 2.

6 (Video played.)

7 BY MR. SOFER:

8 Q. Now, can you tell us what area of the hotel Clip 2
9 represents?

10 A. It represents the back hallway of the hotel and the
11 second floor.

12 MR. SOFER: That went by real fast. Maybe we can pause
13 it.

14 (Video played.)

15 MR. SOFER: Can you play it with a person in it?

16 (Video played.)

17 BY MR. SOFER:

18 Q. Okay. And again is that the same individual you just
19 described?

20 A. Yes, sir.

21 Q. The defendant in this case?

22 MR. SOFER: Could you play Clip 3?

23 (Video played.)

24 BY MR. SOFER:

25 Q. Is that the same camera angle?

1 A. Yes, sir.

2 MR. SOFER: Okay. Play the next clips, please. Stop them
3 if you can.

4 (Video played.)

5 BY MR. SOFER:

6 Q. Okay. Is that the same angle of the hotel at a
7 different time?

8 A. Yes, sir.

9 Q. Okay. Generally speaking is the date and time
10 represented in the left-hand -- upper left-hand corner
11 accurate?

12 A. Yes, sir.

13 MR. SOFER: Okay. Play the next clip, please.

14 (Video played.)

15 BY MR. SOFER:

16 Q. Okay. Is that the same area we saw in the first clip
17 except during the daylight hours?

18 A. Yes, sir.

19 Q. I want to go back to July 26th, 2011 and ask you when
20 the defendant came into the hotel to check in could you tell us
21 what it is that you did?

22 A. I checked him in for a six night stay and at the time
23 we didn't have any single bedrooms available so what I did was
24 I said, you know, I'll put you in a one bedroom for tonight
25 and -- or a two bedroom for tonight and then tomorrow you can

1 move to a single bed.

2 Q. And can you describe for the members of the jury what
3 documents it is that you fill out when someone checks into the
4 hotel?

5 A. If they pay cash we fill out a receipt and give them
6 a copy or we just keep a copy. There's a registration card
7 they must fill out and then we also take a copy of the ID.

8 Q. Okay. I want to show you three pages of documents
9 marked Government Exhibit No. 46 for identification. Have you
10 looked at these documents previously, sir?

11 A. Yes, sir.

12 Q. Do you recognize -- from where I'm standing can you
13 see them?

14 A. Yes, sir.

15 Q. Okay. Are these the documents that you used to check
16 in the defendant on the 26th when he checked in?

17 A. Yes, sir.

18 Q. And that was again at about 3:30 in the morning?

19 A. Yes.

20 Q. Do they fairly -- is it your writing on these
21 documents?

22 A. If it has my initials on it, yes.

23 Q. Okay. You've seen these before, right?

24 A. Yes.

25 Q. Okay. Do you recall having -- it having your writing

1 on them?

2 A. Yes, sir.

3 MR. SOFER: At this time the government offers Government
4 46 into evidence.

5 MR. BOYD: No objection.

6 THE COURT: 46 is admitted.

7 (Exhibit(s) admitted: G46)

8 BY MR. SOFER:

9 Q. Try to show these to you so that you can see them.
10 Show the big page here, the big white page. Can you see
11 Government Exhibit No. 46 in evidence there? Can you tell the
12 members of the jury what that document is?

13 A. That is the guest registration form.

14 Q. Okay. And again the writing here on the document, is
15 that your writing down here at the bottom?

16 A. Yes, sir.

17 Q. Okay. Now, can you describe for the members of the
18 jury whether or not the defendant changed his reservation while
19 he was staying at the hotel?

20 A. Could you repeat that?

21 Q. Did there come a time when the defendant changed his
22 reservation during the time he was staying at the hotel?

23 A. Yes, sir.

24 Q. Can you describe that for the members of the jury?

25 A. He had checked in early morning on the 26th. I was

1 off work for the rest of the day, then came back that night and
2 he came in about 10:00, 10:15 p.m. on my next shift and wanted
3 to change to a single bedroom.

4 Q. Okay. Did he change the amount of days that he was
5 staying as well?

6 A. Yes, sir.

7 Q. Can you describe that for the members of the jury?

8 A. He had asked if he doesn't want to stay the six
9 nights, you know, is there a possibility of a refund for
10 whatever he paid whatever the difference would be.

11 Q. Okay. And did you give him a refund?

12 A. Yes, sir.

13 Q. How much of a refund -- how many nights did you give
14 him a refund for?

15 A. I refunded him for two nights.

16 Q. So he both changed the room he was in as well as how
17 many nights he was staying?

18 A. Yes, sir.

19 Q. And can you tell the members of the jury what room he
20 originally checked into and what room he ultimately went to?

21 A. He had checked into Room 248 which is two beds and a
22 smoking room and he was supposed to move to Room 230 which is
23 also a smoking room but only has one bed in it.

24 Q. Okay. And can you describe basically for the members
25 of the jury what the defendant's demeanor was while he was

1 checking into the hotel?

2 A. He didn't seem right. He just wouldn't stay still,
3 jittery and didn't really ask a lot of questions like usual
4 customers do about, you know, wi-fi, breakfast and anything
5 like that. He just kind of kept to himself.

6 Q. Okay. Is it the hotel's policy to make a copy of the
7 identification that your guest uses to check in?

8 A. Yes, sir.

9 Q. I'm going to show you the third page of Government
10 Exhibit No. 46. Do you recognize this?

11 A. Yes, sir.

12 Q. What is it?

13 A. It is the ID that he gave me so I can process it in
14 the computer.

15 Q. I don't know if you're able to see this, but can you
16 tell the members of the jury what name is on that
17 identification?

18 A. Asher Pluto.

19 Q. And is this -- was this document that is the original
20 Tennessee identification card or driver's license given to you
21 by the defendant when he checked into the hotel?

22 A. Yes, sir.

23 Q. Finally did you give him a receipt?

24 A. No, sir. I kept both copies.

25 Q. Okay. Well, what's this document here on top?

1 A. That is the cash receipt that I wrote out for him.

2 Q. Okay. So that was the cash receipt. And again under
3 the name Pluto?

4 A. Yes, sir.

5 Q. How did he pay for his stay at the hotel?

6 A. In cash.

7 MR. SOFER: Pass the witness, Your Honor.

8 MR. BOYD: No further questions, Your Honor.

9 MR. SOFER: May the witness be excused, Your Honor?

10 THE COURT: Yes, sir.

11 You may step down, sir. You may be excused.

12 MR. FRAZIER: Cathy Cheadle will be the government's next
13 witness.

14 (The witness was sworn.)

15 DIRECT EXAMINATION

16 BY MR. FRAZIER:

17 Q. And would you please introduce yourself to the ladies
18 and gentlemen of the jury?

19 A. My name is Cathy Cheadle. I'm the store manager at
20 Guns Galore.

21 Q. And how long have you worked at Guns Galore?

22 A. About eight years.

23 Q. Where is Guns Galore located?

24 A. In Killeen, Texas.

25 Q. Okay. That's in Bell County?

1 A. Yes.

2 Q. And what type of store is Guns Galore?

3 A. Firearm retail, ammunition, reloading accessories,
4 that kind of thing.

5 Q. And how long has Guns Galore been open for business?

6 A. Since May of 1999.

7 Q. All right. And do you -- who all works in the store
8 there? I mean, it's you and your husband David Cheadle?

9 A. Uh-huh. And there's another full-time clerk Dave
10 Newby and then we have a part-time worker who works Monday and
11 Thursday.

12 Q. And who is that?

13 A. Greg Ebert.

14 Q. Okay. I want to direct your attention back to the
15 date of July the 26th of last year. Do you recall that date?

16 A. Yes.

17 Q. Okay. Did you have occasion on that date to come
18 into contact with someone who came into -- let me rephrase that
19 question. Did you come into contact with someone that day who
20 came into your store looking for -- asking questions about
21 smokeless powder?

22 A. He didn't ask questions about it. He just started
23 grabbing.

24 Q. Okay. And that's -- the only reason I say that is I
25 want to direct your attention. You know which episode or

1 incident I'm talking about?

2 A. Yes.

3 Q. About what time of day was this?

4 A. About close to 1:00 o'clock.

5 Q. Okay.

6 A. Around there.

7 Q. Okay. I'm showing you what's been marked for
8 identification and previously introduced rather as Government's
9 Exhibit No. 153A. Do you see that photograph?

10 A. Yes.

11 Q. Do you recognize that person?

12 A. Yes.

13 Q. Is that the person who came into the store that day
14 that we're talking about?

15 A. Yes.

16 Q. When -- first of all can you tell the ladies and
17 gentlemen of the jury how the person you just described in 153A
18 was dressed?

19 A. He was wearing a Longhorn T-shirt and matching like
20 basketball shorts and a pair of dark sunglasses.

21 Q. Did he have a cap or hat or anything like that on?

22 A. No.

23 Q. Okay. And was there anything about the way -- what
24 he was wearing or his demeanor that struck you -- that you
25 noticed as he walked into the store?

1 A. Not initially.

2 Q. Okay. What did catch your attention?

3 A. He kept his sunglasses on the whole time he was in
4 the store. Never took them off. Occasionally he'd like do
5 this, you know.

6 Q. When you say do this, you mean pull the glasses down?

7 A. To see but wouldn't take them off.

8 Q. Okay. Where did the person go that you just
9 identified for us in 153A? Where did he go when he came into
10 the store?

11 A. He came down the middle aisle and kind of around the
12 corner and stopped at the smokeless powder display we have.

13 Q. Okay. What did he do there?

14 A. He started picking, looking at them, putting them
15 back. Eventually he selected four one pound containers and
16 brought them to the counter and then went back to the display
17 and at the same time was asking what smokeless powder was as he
18 was picking two more pounds of it.

19 Q. What did you think of that when he made that -- asked
20 you that question?

21 A. I thought it was odd because he's picking six pounds
22 of something he knows nothing of what it is.

23 Q. And what is smokeless powder?

24 A. It's used for reloading bullets.

25 Q. Okay. Does it -- is it flammable?

1 A. Flammable.

2 Q. Is it highly flammable?

3 A. Yes.

4 Q. So when he asked that question, did anyone answer
5 him?

6 A. Well, we explained it was a substitute for black
7 powder which we do not sell. It's a smokeless -- they just
8 call it smokeless powder because you need certain permits for
9 black powder and record keeping and we just don't stock that.

10 Q. Okay. So after he picked the four pounds and placed
11 them on the counter, what did he do then?

12 A. He started to just randomly walk around the store not
13 really looking at anything. Went to the back aisle. Asked
14 about .40 ammunition like, you know, get me some .40 Smith &
15 Wesson ammunition and Greg the other store clerk told him it
16 was up here in the front. He could come and make his own
17 selection, that we weren't just going to pick out the
18 ammunition for him.

19 Q. Are there -- are there many different types of .40
20 caliber ammunition?

21 A. Yes.

22 Q. Was that question -- did you -- what did you think of
23 that particular question regarding -- or the statement he made
24 regarding the 40-caliber ammunition?

25 A. Well, it's kind of like an order like get it for me

1 and we're just, no. Just come pick your own out.

2 Q. Okay. Back to the -- to the smokeless powder. You
3 say he picked four canisters of it and a canister weighs how
4 much each one?

5 A. We have one pound canisters.

6 Q. Did he acquire any more smokeless powder?

7 A. He had the four initial and then grabbed two more.

8 Q. Okay.

9 A. So a total of six.

10 Q. Now, was there anything unusual about the types of
11 smokeless powder that he picked?

12 A. They were all different.

13 Q. Did that strike you as odd?

14 A. Usually when somebody buys that quantity they're
15 buying more like two of one kind or multitudes of the same kind
16 and then they're also buying other components, bullets,
17 primers, cases, stuff for reloading. It's not just six random
18 selections of black powder.

19 Q. Did he acquire any of those things like primers and
20 bullets?

21 A. No.

22 Q. When he sat the canisters of smokeless powder on the
23 counter, what did you do?

24 A. I was making note of what types he was buying number
25 one just for what he was buying and then also we -- I do that

1 so that when the customer leaves I can go restock the same
2 amount of what he picks off the shelf.

3 Q. Okay. Now, at some point after he had the
4 conversation with Mr. Ebert regarding the 40-caliber
5 ammunition, what did the defendant do then?

6 A. He also inquired about a magazine for a firearm to
7 Greg.

8 Q. What type of magazine?

9 A. It was for an XD pistol.

10 Q. Was there anything in particular about the magazine
11 that he was asking about?

12 A. No. He just was asking for one.

13 Q. Okay. Ultimately did he pick one?

14 A. Yeah. He and Greg picked that out.

15 Q. Okay. Was it one that was part of his purchase?

16 A. Yes.

17 Q. What else happened? What else did he do inside the
18 store after he picked the magazine? Anything else?

19 A. He asked about some shotgun ammunition. We showed
20 him different types of that. He selected some 20 gauge
21 Winchester ammunition. Made his purchase. He paid in cash,
22 left the receipt, left the cash. There wasn't very much change
23 but he left that. As he was leaving, I told him to have a nice
24 day.

25 Q. Now, let me ask you. I'll come back to that part in

1 just a moment. I don't want to get too far ahead.

2 A. Okay.

3 Q. So he bought the -- he got -- acquired two -- how
4 many boxes of 12 gauge ammunition did he acquire?

5 A. I believe it was three.

6 Q. Okay. And were there any other items that he
7 acquired for purchase that you recall? Is that pretty much it?

8 A. That's pretty much it.

9 Q. Okay. Now, the -- at this point at the point that
10 he's checked out or is checking out have you made some type of
11 notation? You said you were making notes of the black powder.
12 By this time had you already made your notations of what type
13 of smokeless powder the person was purchasing?

14 A. Yes. And then we were also checking the security
15 monitors just because we randomly do that. Noticed an
16 individual standing in the parking lot. So that was kind of
17 like a flag. We looked at it a little bit closer. It was the
18 driver of a cab who was standing in the parking lot which
19 seemed odd but not -- you know, it just doesn't happen very
20 often.

21 Q. Okay. So at this point what -- what was going
22 through your mind?

23 A. I just found the amount of smokeless powder kind of
24 alarming, his demeanor, the fact he wouldn't take his
25 sunglasses off. It just was a little odd.

1 Q. Okay. Do customers routinely purchase six pounds at
2 a time?

3 A. If -- if they do, it's usually like I said more
4 multitudes of the same kind and they're buying other components
5 as well.

6 Q. For the reloading supplies?

7 A. Right. They're stocking up for -- you know, they're
8 going to do a reloading run.

9 Q. Okay. Now, you mentioned surveillance video. Does
10 Guns Galore have a video surveillance system?

11 A. Yes.

12 Q. Okay. And it was operating at the time?

13 A. Yes.

14 Q. And you are actually in the transaction yourself. So
15 you've had a chance to view the video; is that correct?

16 A. Yes.

17 Q. Now I'm showing you what's been marked for
18 identification as Government's Exhibit No. 49. You've had a
19 chance previously to look at the video surveillance or the
20 digital footage from your store, correct?

21 A. Yes.

22 Q. And is the exhibit contained -- the video
23 surveillance footage of the transaction that occurred at the
24 counter between the person you identified in Government's
25 Exhibit No. 153A and yourself and who else is in the video

1 surveillance?

2 A. Greg Ebert.

3 Q. Okay. And approximately how long is that particular
4 transaction this particular video run in terms of length of
5 time?

6 A. I want to say seven minutes or so.

7 Q. Okay. And -- but in addition to this angle, the
8 store surveillance has a number of different angles that they
9 have of surveillance not just inside the store but also outside
10 the store as well, correct?

11 A. Yes.

12 Q. And is this a fair and accurate -- 49 a fair and
13 accurate clip, if you will, of the transaction that occurred
14 between you, Mr. Ebert and the person who is buying the
15 smokeless powder and other items you described?

16 A. Is the disk a --

17 Q. In other words is it the entire transaction?

18 A. Yes.

19 Q. Nothing's been left out of it is what I'm asking.

20 A. Uh-huh.

21 MR. FRAZIER: Your Honor, we will offer into evidence
22 Government's Exhibit No. 49 into evidence.

23 MR. WHITE: No objection.

24 THE COURT: It's admitted.

25 (Exhibit(s) admitted: G49)

1 MR. FRAZIER: If you could -- it's paused -- if you could
2 pause it for just a second, please.

3 BY MR. FRAZIER:

4 Q. Now, we're at the beginning of Government's Exhibit
5 No. 49 that she's playing on the video. If you could, please
6 identify for the jury the people in the video that we're
7 watching.

8 A. I am sitting in a chair. Greg is the gentleman in
9 the black shirt and the individual is in the corner what you
10 can see the longhorn.

11 Q. Where I just put that green arrow on the far
12 left-hand side?

13 A. Yes.

14 MR. FRAZIER: Okay. You can continue.

15 (Video played.)

16 BY MR. FRAZIER:

17 Q. And there's no audio on this, correct?

18 A. No.

19 Q. What area --

20 MR. FRAZIER: Can you pause, please?

21 BY MR. FRAZIER:

22 Q. If you could please tell the jury what area is the
23 person in the back here that I'm circling what is he looking at
24 in the store?

25 A. He's looking at the display of smokeless powder.

1 MR. FRAZIER: Okay. You can proceed. Go ahead.

2 (Video played.)

3 MR. FRAZIER: If you could pause, please.

4 BY MR. FRAZIER:

5 Q. What's he just sat on the counter there?

6 A. The initial four pounds.

7 Q. Thank you.

8 MR. FRAZIER: You can proceed.

9 (Video played.)

10 BY MR. FRAZIER:

11 Q. What are you doing now?

12 A. Making note of what types he's buying.

13 Q. And why are you making that note?

14 A. Primarily just -- I had this feeling. I just wanted
15 to make note of what he was buying and plus to restock the
16 shelf later.

17 Q. Now, can you tell the jury what you're looking at
18 right now?

19 A. I'm looking at the security monitor. There's a
20 camera on the back aisle so I was seeing what he was doing on
21 the back aisle.

22 Q. Are you looking at the surveillance video again?

23 A. Yes.

24 Q. What are you showing him now?

25 A. The shotgun ammunition.

1 Q. When was it you noticed there was a cab outside
2 waiting for him?

3 A. I think it was when he was making his selections I
4 just kind of glanced up to see what was going on outside. We
5 just kind of randomly always check all the cameras what's
6 happening.

7 Q. And what's taking place right now?

8 A. He -- Greg is getting ready to ring him up.

9 Q. And what did you just hand back to that person?

10 A. I wanted to make sure he was of age to purchase the
11 powder.

12 Q. What type of identification -- what type of card did
13 he give you?

14 A. It was an out of state license.

15 Q. Do you remember what the year of birth was?

16 A. I believed it was '89 at the time.

17 Q. Did you notice the name on the driver's license or ID
18 card that he gave you?

19 A. No.

20 Q. At this point what is the person you identified in
21 153 doing?

22 A. He's gone.

23 Q. What are y'all looking at on the monitor there?

24 A. We're seeing if he is getting in the cab and leaving
25 in the cab.

1 Q. And did he in fact do that?

2 A. Yes.

3 MR. FRAZIER. Okay. That's good. Thank you.

4 BY MR. FRAZIER:

5 Q. Okay. You told us you -- let me go back to what
6 you'd said something earlier that when he left the store you
7 said to that person have a nice day. I want to pick up that
8 point.

9 A. Have a nice afternoon.

10 Q. Have a nice afternoon.

11 Did the person you identified in 153A that photograph did
12 he respond to you?

13 A. Yes.

14 Q. Tell the ladies and gentlemen of the jury what he
15 said.

16 A. He said that he hoped that mine would go better than
17 his will.

18 Q. That was it?

19 A. Uh-huh.

20 Q. So what did you do at that point when he left the
21 store -- this is about 1:00 o'clock in the afternoon. What did
22 you do?

23 A. Well, we had other customers coming in. So, you
24 know, when Greg and I could talk we were kind of discussing if
25 we both felt the same that it was as odd to him as it was to me

1 just the whole transaction and we were trying to do it where
2 there weren't customers -- we were trying to find it when the
3 store was empty. You know, it was kind of difficult because,
4 you know, there is people in there all the time and we came to
5 the conclusion that it was just something we couldn't ignore.
6 It was just something felt not right to us.

7 Q. So what did you do?

8 A. At closing, you know, we decided that we didn't want
9 to get anybody in trouble if it was nothing, but we decided
10 that if -- if we didn't do anything and it turned out to be
11 something, it would be worth getting an innocent person in
12 trouble for reporting something that wound up not being
13 anything.

14 Q. Okay.

15 A. So Greg being in law enforcement he has, you know,
16 still the guys he knows on the force. So he made the phone
17 call to report an incident and if they decided to act on it,
18 you know, great. If not, then we had done our part and we felt
19 okay with that.

20 Q. And when you say the police department, are you
21 talking about the Killeen Police Department?

22 A. Yes. The Killeen Police Department.

23 Q. Okay. Now I want to show you some exhibits marked
24 for identification starting with No. 50. Do you recognize
25 that?

1 A. Yes. That's the store receipt from that transaction.

2 Q. Okay. Is it one you printed off your register?

3 A. Yes.

4 Q. And showing you Government's Exhibit No. 51. Do you
5 recognize that?

6 A. Yes. That's my notation of what types of powder were
7 purchased.

8 Q. Looked like on the video Government's Exhibit No. 49
9 you were writing on a sticky note?

10 A. Yes.

11 Q. Did you take that information and transfer it to this
12 on 51?

13 A. Yes. And then I just -- because our register doesn't
14 print out descriptions of what the items are next to them, I
15 wrote what they were like the shotgun ammunition and the
16 magazine.

17 MR. FRAZIER: All right. We'll offer Government's Exhibit
18 No. 50 and 51 into evidence.

19 MR. WHITE: No objection.

20 THE COURT: They're admitted.

21 (Exhibit(s) admitted: G50, G51)

22 BY MR. FRAZIER:

23 Q. Government's Exhibit No. 50 is basically what you
24 described as a copy of the receipt?

25 A. Yes.

1 Q. Let's go to 51. We'll zoom in on this a bit. Using
2 Government's Exhibit No. 51 can you run down the list of items
3 he purchased there in the store and how you've made your notes
4 on here to reflect that?

5 A. The first -- the first item is three boxes of the
6 shotgun ammunition at 12.99 and then it gives the total. Then
7 three of those one pound containers of powder were at 24.99.
8 Two of them were at 25.99 and then the last sixth one was
9 28.99. Then the next item is the XD -- the firearm magazine he
10 had purchased. The sub total, the tax and the total.

11 Q. All right. I'm going to show you what's -- for
12 identification purposes as Government's Exhibit No. 71.

13 MR. FRAZIER: May I approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. FRAZIER:

16 Q. Do you recognize these two boxes contained in
17 Government's Exhibit No. 71?

18 A. It looks like a type of ammunition we would sell.

19 Q. Okay. Was it the type of ammunition he in fact
20 bought?

21 A. Yes.

22 Q. I show you Government's Exhibit 100 and 118. Do you
23 recognize those particular shells?

24 A. I believe they're what would be in that box.

25 Q. The same type of shells?

1 A. Yes.

2 Q. And this box that's contained in Government's 100, is
3 it the same type of box?

4 A. Yes.

5 Q. Do you recognize the price tag on that box?

6 A. It looks like our price tag.

7 Q. Can you see this on your screen, ma'am?

8 A. Yes.

9 Q. Okay. Government's 116. Do you recognize what that
10 is?

11 A. It's the packaging for the XD magazine.

12 Q. And Government's Exhibit No. 102. Can you see
13 that --

14 A. Yes.

15 Q. -- at all?

16 A. Yes.

17 Q. Do you recognize what that is?

18 A. That's a 12 round magazine for an XD firearm.

19 Q. Would 116 be the packaging for an item just like the
20 one contained in 102?

21 A. Yes.

22 Q. I'm showing you Government's Exhibit No. 90 marked
23 IMR4198; 91, HS-6; 92, H414; 93, Lil'Gun; 94, H4350; finally
24 Government's Exhibit No. 95 marked HS-7. Do you recognize
25 these canisters?

1 A. Yes.

2 Q. And what are these canisters?

3 A. Those are one pound containers of smokeless powder.

4 Q. Are they the same cans of smokeless powder purchased
5 by the person you identified in 153 -- excuse me. I'll clear
6 this up for you. Are these the same containers of smokeless
7 powder purchased by the person you identified in 153 earlier?

8 A. They appear to be.

9 Q. Okay. And are they the same notations on the one
10 that you -- that you have on your receipt?

11 A. Yes.

12 Q. Okay. And are the price tags on these consistent
13 with the price tags that your company -- that Guns Galore uses
14 for their pricing?

15 A. Yes.

16 Q. Now, the next day -- and it was later -- about what
17 time of day was it that the call was actually made to the
18 Killeen Police Department if you know?

19 A. When we closed because it was quiet and we could kind
20 of openly talk and discuss it.

21 Q. And what time would that have been?

22 A. 6:00 o'clock.

23 Q. Okay. And was a phone call made?

24 A. Yes.

25 Q. You were present when it was made?

1 A. Yes.

2 Q. I won't ask you what was said or anything like that,
3 but as a result of that phone call did someone come to your
4 store either later that day or the next day?

5 A. The next day.

6 Q. Okay. And who was it that came to the store?

7 A. I believe it was -- I think it's Officer Boone.

8 Q. Okay. And did you provide him with something off
9 your surveillance equipment?

10 A. I'm not sure if he requested copies of the
11 surveillance or not.

12 Q. Did somebody in law enforcement either he or someone
13 else later request copies of surveillance?

14 A. Yes.

15 Q. And who was that that you recall requesting copies?

16 A. I believe it was an FBI officer I believe.

17 Q. Okay. Well, I'm talking about for the Killeen
18 police. Was there somebody from the Killeen police that you
19 provided copies to?

20 A. I don't recall that because I had no property
21 evidence. You know, usually they'll give me something when
22 they take a piece of property.

23 Q. Okay. I'm showing you what's been marked for
24 identification as Government's 48. Do you recognize what these
25 are? I'm showing you A, B, C, D and E. Do you recognize

1 those?

2 A. Those are still shots of our surveillance.

3 Q. Okay. And these were produced off your surveillance
4 equipment that you identified earlier?

5 A. Yes.

6 MR. FRAZIER: Okay. We'll offer Government's Exhibit No.
7 48 into evidence.

8 MR. WHITE: No objection.

9 THE COURT: It's admitted.

10 (Exhibit(s) admitted: G48)

11 BY MR. FRAZIER:

12 Q. Now, this is a different camera angle in Photograph
13 No. A. What is this -- tell the jury what we're looking at
14 here.

15 A. That's the aisle directly from the entrance to the
16 store. The middle aisle of our store.

17 Q. This would be when the person was entering the store?

18 A. Yes.

19 Q. Photograph B?

20 A. That's right in front of the cash register.

21 Q. Photograph C. Is that one of the stills of the video
22 that we saw played for the jury Government's Exhibit No. 49
23 just a few minutes ago?

24 A. Yes.

25 Q. And finally D is -- or next is D. Another still from

1 the same surveillance video?

2 A. Yes.

3 Q. E. The same as from the surveillance video?

4 A. Yes.

5 Q. And I have an exhibit I'd like to show you for
6 identification as 154. Do you recognize what this is a picture
7 of?

8 A. That's the outside corner of the store.

9 Q. Is this the way it appeared back in July of last
10 year?

11 A. Yes.

12 MR. FRAZIER: We'll offer 154 into evidence.

13 MR. WHITE: No objection.

14 THE COURT: It's admitted.

15 (Exhibit(s) admitted: G154)

16 MR. FRAZIER: Pass the witness, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. WHITE:

19 Q. Ms. Cheadle, you didn't sell Mr. Abdo anything that
20 was illegal to sell him that day in the store, did you?

21 A. No.

22 Q. These items by themselves are not illegal for you to
23 sell?

24 A. No.

25 Q. And any combination, any of the things on the

1 receipts or the items themselves illegal in any way?

2 A. No.

3 Q. And if it wasn't illegal for you to sell those items,
4 it was not illegal for Mr. Abdo to purchase those items?

5 A. Correct.

6 Q. And it was perfectly legal for Mr. Abdo to purchase
7 those items each on their own or in any combination?

8 A. Yes.

9 Q. In fact none of the activity we saw either in still
10 photographs or in video that we watched this afternoon, nothing
11 shows illegal activity that you're aware of, does it?

12 A. No.

13 Q. You met with Special Agent Stephen and Officer
14 Castleberry. Do you remember that?

15 A. Not by name I don't.

16 Q. You mentioned 20 gauge ammunition. Could you might
17 have instead meant 12 gauge ammunition?

18 A. Initially I believe it might have been what he bought
19 because he was looking at that but in going back and looking at
20 the surveillance it was the 20 gauge that he had selected.

21 Q. And that would be a reason for a mistake in a report,
22 correct?

23 A. Correct. The boxes are all the same color.

24 Q. But being a different gauge still didn't make
25 anything that you sold or anything that Mr. Abdo purchased

1 illegal that day, did it?

2 A. No.

3 Q. Thank you.

4 MR. FRAZIER: No further questions, Your Honor.

5 THE COURT: You may step down, ma'am. You may be excused.

6 MR. SCHNEIDER: The government calls David Hutton.

7 (The witness was sworn.)

8 DIRECT EXAMINATION

9 BY MR. SCHNEIDER:

10 Q. Good afternoon, Mr. Hutton.

11 A. Hello.

12 Q. Can you introduce yourself to the jury?

13 A. I'm David Richard Hutton.

14 Q. And by whom are you employed?

15 A. [REDACTED].

16 Q. Where is [REDACTED] located?

17 A. It's on [REDACTED] in Killeen.

18 Q. And how long have you worked at [REDACTED]?

19 A. 20 years.

20 Q. What kind of store is [REDACTED]?

21 A. It's an Army surplus store.

22 Q. And what kind of items do you sell there?

23 A. Basically military surplus plus uniform supplies,
24 boots, stuff geared towards the military.

25 Q. And how close is that to Fort Hood?

1 A. Right outside the main gate.

2 Q. What are your responsibilities at the store?

3 A. I manage the store basically.

4 Q. Were you working on direct -- on July 4th of 2011 --
5 sorry. July 26th of 2011?

6 A. Yes.

7 Q. And do you remember a customer coming into the store
8 to purchase a uniform?

9 A. Yeah.

10 Q. And can you describe your first interaction with that
11 customer?

12 A. My first one I'm not really sure what the first one
13 would have been, but...

14 Q. Can you describe your interaction with the customer
15 while he was in the store?

16 A. I basically sold him a uniform and some boots and
17 name tags and sewing. Got him set up with a complete uniform.

18 Q. Do you remember what the name tag was on the uniform?

19 A. Smith.

20 Q. Do you remember seeing the individual first come into
21 the store?

22 A. No.

23 Q. Do you remember what he was wearing while he was
24 shopping?

25 A. Yeah. He was wearing a tank top and shorts and a hat

1 all geared towards Texas Longhorns.

2 Q. Was he wearing anything else on his face or --

3 A. Sunglasses.

4 Q. -- on his body?

5 Did you say sunglasses?

6 A. Yes, sir.

7 Q. Did he take off the sunglasses while he was in the
8 store?

9 A. No.

10 Q. Did you have any discussions with him about any of
11 the items that he wanted to purchase?

12 A. I basically told him where the boots are at. I
13 also -- you know, normally I try to spark conversation between
14 customers and I, you know, asked him where he was coming from
15 and basically that's...

16 Q. I'm going to show you Exhibit 153A which is already
17 in evidence. Do you recognize that photo?

18 A. Yes.

19 Q. Is that the person that came into the store that day
20 that we're talking about?

21 A. Yes.

22 Q. And just to show you another view Exhibit 153B. Is
23 that the same person?

24 A. Yes.

25 Q. So you said you came -- he came in and you tried to

1 engage him in conversation. Was there any conversation?

2 A. Very limited. He told me he was coming from Campbell
3 but much more than that I don't recall. He seemed not very
4 talkative.

5 Q. And do you remember him bringing any items for
6 purchase?

7 A. Yes. He bought basically a complete uniform, pants,
8 jacket, hat, T-shirt, boots.

9 Q. Now, do you have a surveillance video inside Surplus
10 City?

11 A. Yes, sir.

12 Q. And are you one of the people that has care, custody
13 and control of the video surveillance system in that store?

14 A. Yes, sir.

15 Q. You're familiar with the system?

16 A. Yes, sir.

17 Q. Is it always running?

18 A. Always.

19 Q. Where does it record to?

20 A. We've got a computer in the office that records all
21 of the cameras.

22 Q. And if someone needs to look at the surveillance
23 video footage, are you the person that is in charge of that?

24 A. Yes.

25 Q. Can you tell looking at a certain video whether it

1 comes from inside Surplus City?

2 A. Yes.

3 Q. And does Surplus City keep the video surveillance in
4 its regular course of business?

5 A. Yes.

6 Q. Is it part of Surplus City's business to accurately
7 record events on that video?

8 A. Yes.

9 Q. Is the surveillance video recorded at the time
10 that's -- is there -- actually let me back up. Is there a time
11 stamp on the video?

12 A. Yes.

13 Q. And is the surveillance video recorded at the time of
14 the events as they're occurring or close to it?

15 A. Close to it. Yes.

16 Q. Okay. I'd like to show you Government's Exhibit 52
17 for identification. Do you recognize that? Do you know what
18 that is?

19 A. A CD.

20 Q. And did you provide a CD with video surveillance
21 footage from the surplus store, Surplus City store to the FBI?

22 A. Yes.

23 Q. And did you review that surveillance video footage --

24 A. Yes.

25 Q. -- prior to providing it to the FBI?

1 A. Yes.

2 MR. WHITE: No objection.

3 MR. SCHNEIDER: Your Honor, the government would move
4 Government's Exhibit 52 into evidence.

5 THE COURT: It will be admitted.

6 (Exhibit(s) admitted: G52)

7 MR. SCHNEIDER: Okay. If we can -- if we can play 52.

8 (Video played.)

9 BY MR. SCHNEIDER:

10 Q. Now, the footage that we're watching on the screen
11 right now, what is that an angle of?

12 A. That's the front door.

13 MR. SCHNEIDER: Can you pause it right there?

14 BY MR. SCHNEIDER:

15 Q. Is that the individual that you've been testifying
16 about previously?

17 A. Yes, sir.

18 Q. And what is he wearing in that picture?

19 A. The Longhorns T-shirt -- I mean tank top, hat and
20 shorts.

21 Q. Okay. Is there anything else that he has on his
22 person?

23 A. Sunglasses and the backpack.

24 Q. Do you recall him entering the store with the
25 backpack?

1 A. Yes.

2 Q. Do you remember while he was in the store if he ever
3 took off the backpack in your sight?

4 A. Not that I recall.

5 MR. SCHNEIDER: Okay. If you can continue the video.

6 (Video played.)

7 MR. SCHNEIDER: Okay. And If we can play the next clip,
8 please.

9 (Video played.)

10 BY MR. SCHNEIDER:

11 Q. Now, who else is in the video footage in this clip?

12 A. The coworker Rita.

13 Q. And is she the one located on the bottom of the
14 screen?

15 A. Yes, sir.

16 Q. And she's wearing sort of a purple shirt?

17 A. Yes.

18 Q. And there's another head that's in the screen. Do
19 you know who that is?

20 A. That's me.

21 Q. Do you remember being at the counter during this
22 purchase?

23 A. Yes.

24 Q. And can you tell us what the items are that are being
25 put on the counter for purchase?

1 A. He's got a pair of boots, a shirt, a hat and a pair
2 of pants.

3 Q. Okay. So other than those uniform pieces that were
4 just put on the counter in that video, did this person buy any
5 other items in your store?

6 A. He purchased the name tag U.S. Army. He had sewing
7 done on the hat and then he also bought a belt.

8 Q. Now, did you have any discussion about any of the
9 patches for the uniform?

10 A. Yes. He asked me for the patch -- you know, a
11 patch -- the main patch for Fort Hood and I said, well,
12 basically it depends, you know, which unit you're going to and
13 coming from Campbell I figured he might have been Airborne so
14 he was either 504 through First Cav, but he didn't seem to know
15 which really patch he needed.

16 Q. And is that something that's common that you see at
17 your store?

18 A. Yeah. Until they get to Fort Hood and get to the
19 21st replacement to know who they're going to, a lot of times
20 they're not sure of who they're going to be with.

21 Q. And were there any other patches that he purchased
22 for his uniform?

23 A. I believe the American flag patch, too.

24 Q. And what about for the hat?

25 A. He had rank sewn on the hat.

1 Q. And what was the rank?

2 A. Sergeant.

3 Q. Was there a rank on the uniform?

4 A. He probably would have bought a rank for the shirt,
5 too.

6 Q. And was there any type of name tag?

7 A. Yes.

8 Q. And what was the name tag?

9 A. Smith.

10 Q. I'd like to show you Government's Exhibit 121 for
11 identification. This contains a number of items in
12 Government's Exhibit 121. First item. Do you recognize this?

13 A. It's an Army hat. Yes.

14 Q. And does it have a name on the back?

15 A. Yes. Smith.

16 Q. Okay. And this next item from Government's 121?

17 A. It's an Army shirt.

18 Q. Is there a name --

19 A. Smith.

20 Q. -- on that?

21 Is there a rank?

22 A. Sergeant Smith. Yes.

23 Q. And what patches?

24 A. First Cav. And First Cav is a combat patch with the
25 American flag.

1 Q. This next item from Government's Exhibit 121. Do you
2 recognize that?

3 A. Yes, sir.

4 Q. What is that?

5 A. It's a pair of Army ATU pants.

6 Q. The next item?

7 A. It's a belt.

8 Q. What color?

9 A. It's tan.

10 Q. And this next item?

11 A. That's just a black belt.

12 Q. And then finally this last item from Government's
13 121?

14 A. A pair of boots.

15 Q. And are these all items that the defendant purchased
16 in Surplus City from you?

17 A. All besides the black belt.

18 Q. Now, do you remember -- do you remember how much this
19 cost?

20 A. Approximately \$200.

21 Q. And do you remember how the defendant paid?

22 A. Cash.

23 Q. Once he paid for these items, what, if anything,
24 happened next?

25 A. He -- I believe he called for a cab, got the

1 phonebook and asked for a cab and then purchased a belt because
2 he -- he asked to try to -- to put the clothes on and then
3 before he did that he realized he needed a belt. Purchased a
4 belt and then went to the bathroom to try them on.

5 Q. And did he just try on the clothes for a fit, or --

6 A. No.

7 Q. What did he do when he tried them on?

8 A. He put them on and wore them out of the store.

9 MR. SCHNEIDER: And do we have the next clip of the video?

10 (Video played.)

11 BY MR. SCHNEIDER:

12 Q. What does this show in the -- on the counter?

13 A. It's the items he purchased.

14 (Video played.)

15 BY MR. SCHNEIDER:

16 Q. Now, do you remember what time of day this occurred?

17 A. I believe it was in the afternoon.

18 Q. And is that you in the bottom of the screen?

19 A. Yes.

20 Q. In the blue shirt?

21 A. Yes.

22 MR. SCHNEIDER: Go to the next clip.

23 (Video played.)

24 BY MR. SCHNEIDER:

25 Q. What camera angle is this?

1 A. This is from -- close to the register. So the front
2 door.

3 Q. And what does that video show? Is that the same
4 person?

5 A. Yes.

6 Q. And is he leaving there in the uniform that you just
7 sold him?

8 A. Yes, sir.

9 Q. Now, you mentioned that he had called a cab?

10 A. Yes.

11 Q. And did he do that in front of you?

12 A. Yes. He borrowed our phonebook.

13 Q. And did you ever see if the cab showed up?

14 A. Yes. I actually went outside to tell the person
15 driving the cab that he was inside trying some clothes on and
16 that he would -- because he'd been quite awhile in the
17 bathroom.

18 Q. And finally I'd like to show you Government's Exhibit
19 155 for identification. Do you recognize that?

20 A. Yes. That's our store front.

21 MR. WHITE: No objection.

22 MR. SCHNEIDER: The government moves Government's Exhibit
23 No. 155 into evidence.

24 THE COURT: It's admitted.

25 (Exhibit(s) admitted: G155)

1 BY MR. SCHNEIDER:

2 Q. And is that a picture of the outside of the store?

3 A. Yes, sir.

4 Q. Is that a fair and accurate representation of how it
5 looked --

6 A. Yes, sir.

7 Q. -- last summer?

8 A. Yes, sir.

9 Q. Regarding the video surveillance that we've just
10 looked, does that have a time stamp on it?

11 A. It should have a time stamp on one of them.

12 Q. Okay. And which of the videos would help you in
13 determining what time these events took place?

14 A. Well, the one where you can see me -- where I was
15 eating my lunch. Usually I eat lunch around 1:00 o'clock so --
16 and that's a pretty -- I'm a diabetic. So I kind of eat on
17 schedule.

18 Q. If we play the video again would you be able to tell
19 what the time is? Does that have a time stamp on it?

20 A. I'm not sure which -- we don't have a time stamp on
21 it.

22 Q. Okay. But you recall eating lunch at the time at the
23 counter?

24 A. Yes, sir.

25 MR. SCHNEIDER: Nothing further. Pass the witness.

CROSS-EXAMINATION

BY MR. WHITE:

Q. Sir, none of these items you sold Mr. Abdo, it wasn't illegal for you to sell them?

A. No, sir.

Q. So therefore it wasn't illegal for Mr. Abdo to purchase any of the things that he purchased from you in the store that day?

A. No, sir.

Q. And any of the footage we've seen of the video, nothing showed any illegal activity whatsoever, did it?

A. No, sir.

Q. Thank you.

MR. SCHNEIDER: Nothing further. May the witness be excused, Your Honor?

THE COURT: Yes, sir.

You may step down. You may be excused.

MR. FRAZIER: United States calls Rosemary Manning.

THE COURT: How long will she be?

MR. FRAZIER: About 15 minutes, maybe shorter.

THE COURT: All right.

(The witness was sworn.)

DIRECT EXAMINATION

BY MR. FRAZIER:

Q. Would you please introduce yourself to the ladies and

1 gentlemen of the jury?

2 A. My name?

3 Q. Yes, ma'am.

4 A. I'm Rosemary Manning.

5 Q. Okay. And pull the microphone just a little closer
6 to you. Thanks.

7 What do you do for a living, Ms. Manning?

8 A. I drive a taxi in Killeen.

9 Q. Okay. And what company do you work for?

10 A. [REDACTED].

11 Q. Back in July of last year were you working with Cove
12 Taxi?

13 A. Yes. I was.

14 Q. And did you around 1:20 or so in the afternoon get a
15 dispatch to a business in Killeen?

16 A. Yes. I did.

17 Q. And what business was that?

18 A. Surplus City in Willow Springs.

19 Q. I'm showing you Government's Exhibit 155. Can you
20 see that photograph where you sit?

21 A. Yes, sir.

22 Q. On your screen right there?

23 A. Uh-huh.

24 Q. Okay. Is that a picture of Surplus City?

25 A. Yes. It is.

1 Q. And that's where you went on the 26th of last year?

2 A. Yes. It is.

3 Q. Now, when you got there did -- was your fare waiting
4 for you?

5 A. He was busy getting dressed.

6 Q. Okay. Did you have to wait awhile?

7 A. Yes, sir. I did.

8 Q. And how did you know he was getting dressed?

9 A. Because the man at the Surplus City came out and told
10 me that I need to wait a minute, that he was changing.

11 Q. Did he eventually come out?

12 A. He did.

13 Q. And what was he wearing when he came out?

14 A. Army clothes.

15 Q. All right. And I'm showing you Government's Exhibit
16 No. 153A. Do you recognize that photograph?

17 A. Yes. I do.

18 Q. And who is that person?

19 A. Naser Abdo, the one -- the kid that was in my taxi.

20 Q. All right. Is that the fare that you picked up there
21 at Surplus City?

22 A. Yes. It is.

23 Q. Okay. From Surplus City tell the ladies and
24 gentlemen of the jury where you went. Where Mr. Abdo wanted to
25 go.

1 A. We -- first we went to a Whataburger parking lot
2 where he -- I got out of my cab and got in my trunk and got a
3 telephone book out. If I can remember this correctly. From
4 there we went to Kmart which is 1,000 feet in front. He went
5 in for awhile. He came back out. He had just a Gatorade in
6 his hand. Then from there we went to Lowe's and I believe from
7 Lowe's we went to Hawaiian Grill on Rancier and then I took him
8 back to his motel.

9 Q. All right. Let me back up just a second to the
10 Lowe's. When you dropped him off at Lowe's, did he go inside
11 to shop?

12 A. Yes, sir. He did. I waited for him.

13 Q. Did he come out with some items?

14 A. Yes, sir. He did.

15 Q. And in particular do you remember a couple of the
16 items that he came out with?

17 A. I do. He had some butterfly laminates like something
18 you would put outside on your patio.

19 Q. And what else do you remember him having?

20 A. I'm not really quite sure.

21 Q. Did you see any boxes or anything?

22 A. Oh, yes, sir. As a matter of fact we did get two
23 boxes. He had two boxes.

24 Q. All right. I'm showing you what's been marked for
25 identification as Government's Exhibit No. 134. Can you see

1 this box from where you're at?

2 A. Yes, sir.

3 Q. Does this look similar to the box that he had?

4 A. It does.

5 Q. Okay. When you say laminates, you mean like little
6 lights?

7 A. Like little lights. Uh-huh.

8 Q. And Government's Exhibit No. 144. Do you recognize
9 these boxes in this bag?

10 A. Yes, sir. I do.

11 Q. And where do you recognize them from?

12 A. From Lowe's.

13 Q. They look like the boxes he had on that day?

14 A. Yes, sir.

15 Q. What did he do -- and did he have some other items as
16 well that he had acquired at Lowe's?

17 A. He could have but I just remember seeing the
18 laminates.

19 Q. Okay. And the boxes?

20 A. And the boxes. Uh-huh.

21 Q. Where did those items go when he left Lowe's? What
22 did y'all -- what did he do with them?

23 A. They were in my taxi.

24 Q. And from there you went where?

25 A. From Lowe's I believe we went to the C&H Hawaiian

1 Grill on Rancier.

2 Q. Was that because he asked for --

3 A. He asked for a place to eat.

4 Q. Okay. Did he acquire food there?

5 A. Yes, sir. He did. A takeout order.

6 Q. And then did he get back in the cab?

7 A. Yes, sir. He did.

8 Q. And what did he -- where did you go then?

9 A. I believe I dropped him off at his motel at the Best
10 Value Inn.

11 Q. Okay. America's Best Value Inn?

12 A. America's Best Value Inn. Yes, sir.

13 Q. And where is that located at?

14 A. It's on South Fort Hood Street.

15 Q. Okay. Was he carrying anything with him the entire
16 time you were with him from the time he got into the cab until
17 the time he left?

18 A. Yes, sir. He was. He had a black backpack.

19 Q. Did the black backpack did it appear to have stuff in
20 it?

21 A. Oh, yes.

22 Q. Okay. Did he ever leave the backpack in your -- in
23 your cab on any of the stops that he made?

24 A. He did not that I recall. I never remembered him
25 leaving it.

1 Q. Okay. And after you dropped him off at the America's
2 Best Value Inn and Suites approximately how much -- how much
3 time had elapsed from the time you picked him up?

4 A. It had to be a good hour.

5 Q. Okay. Can you describe the defendant's demeanor, how
6 he acted and what -- not how he acted but what his mind-set
7 was, his demeanor was while you were with him in the cab?

8 MR. BOYD: Your Honor, I'm going to object as to calls for
9 speculation asking her to testify as to mind-set.

10 THE COURT: I agree. Sustained.

11 BY MR. FRAZIER:

12 Q. What was -- describe what his demeanor was. In other
13 words not what he was thinking. I didn't mean that but act --
14 how he was acting.

15 A. He -- he was quiet and distant. I thought he was a
16 little arrogant. He was on the phone at times. His cell phone
17 at times. He didn't seem like -- I mean, he wanted to be in
18 charge.

19 Q. Okay.

20 A. And I kind of had a feeling he may have -- he didn't
21 know much of the area but he at least knew where Lowe's was.

22 Q. Okay. All right. Thank you very much, ma'am.

23 MR. FRAZIER: We'll pass the witness.

24 CROSS-EXAMINATION

25 BY MR. BOYD:

1 Q. Good afternoon, ma'am. I'm Zach Boyd.

2 So you picked him up, went to Kmart, went to Lowe's, went
3 to Hawaiian Grill and then back to the hotel?

4 A. That's correct.

5 Q. And as a taxi cab driver, you know, when people ask
6 you to go places, I mean, they are kind of in charge, right?

7 You're providing them a service, right?

8 A. Right.

9 Q. Okay.

10 A. Uh-huh.

11 Q. Now, you didn't see him steal anything from Kmart,
12 did you?

13 A. I didn't go into Kmart with him. So therefore I
14 didn't see him steal anything.

15 Q. You didn't see him do anything illegal, did you?

16 A. No.

17 Q. Weren't aware of anything illegal he had on his
18 person at any time?

19 A. No.

20 Q. He was just a fare, right?

21 A. Right.

22 MR. BOYD: Nothing further.

23 MR. FRAZIER: Nothing further, Your Honor. May this
24 witness be excused?

25 THE COURT: Yes, sir.

1 You may be excused, ma'am.

2 And, ladies and gentlemen, we will recess for this
3 afternoon. We'll resume at 9:00 o'clock in the morning.
4 Please remember the instructions I've give you that you
5 shouldn't talk with anyone about the case or allow anyone to
6 talk with you. Do not use any type of electronic equipment or
7 any other manner to try to learn something about the case. You
8 know more about this case than any place you could try to learn
9 something about it because you're the ones who have been
10 sitting here listening. We'll see you at 9:00 o'clock in the
11 morning.

12 LAW CLERK: All rise.

13 (Jury exited the courtroom at 4:57.)

14 LAW CLERK: Court will stand in recess until 9:00 o'clock
15 tomorrow morning.

16 (Hearing adjourned at 4:58.)

17

18

19

20

21

22

23

24

25

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 WACO DIVISION

4 UNITED STATES OF AMERICA *

*

5 *

6 VS.

* CRIMINAL ACTION NO. W-11-CR-182

*

7 NASER JASON ABDO

* May 23, 2012

8 BEFORE THE HONORABLE WALTER S. SMITH, JR., JUDGE PRESIDING

9 JURY TRIAL PROCEEDINGS

VOLUME 3

10 APPEARANCES:

11 For the Government:

Mark Frazier, Esq.

Gregg N. Sofer, Esq.

Lawrence Schneider, Esq.

12 Assistant United States Attorneys

13 PO Box 828

Waco, Texas 76701

14 For the Defendant:

Zachary L. Boyd, Esq.

15 PO Box 870

Copperas Cove, Texas 76522

16 - and -

Michael F. White, Esq.

17 1103 N. Gray

Killeen, Texas 76541

18 Court Reporter:

Kristie M. Davis

19 United States District Court

20 PO Box 20994

Waco, Texas 76702-0994

21
22 Proceedings recorded by mechanical stenography, transcript
23 produced by computer-aided transcription.
24
25

1 (May 23, 2012, 9:07, defendant present.)

2 LAW CLERK: All rise.

3 (The jury entered the courtroom at 9:07.)

4 THE COURT: Be seated, everyone.

5 Good morning, ladies and gentlemen. I think we're ready
6 to begin with the government's next witness.

7 MR. SCHNEIDER: Good morning, Your Honor. The government
8 calls Cameron Chesser.

9 (The witness was sworn.)

10 DIRECT EXAMINATION

11 BY MR. SCHNEIDER:

12 Q. Good morning, Mr. Chesser.

13 A. Good morning.

14 Q. Would you please introduce yourself to the jury?

15 A. My name is Cameron Chesser. I'm a loss prevention
16 safety manager with [REDACTED] in Killeen, Texas, [REDACTED].

17 Q. And how long have you been employed by [REDACTED]?

18 A. Come this November it will be five years.

19 Q. And you said you were a loss prevention officer?

20 A. Yes.

21 Q. How long have you been a loss prevention officer with
22 [REDACTED]?

23 A. The entire time. I was hired I believe November
24 19th, 2007.

25 Q. And in that position what are your responsibilities?

1 A. Basically control shrink, reduce liability of the
2 store, ensure that we remain profitable.

3 Q. Are you one of the people at [REDACTED] that has care,
4 custody and control of the video surveillance system?

5 A. Yes. I am.

6 Q. And is that for the specific store you work at in
7 Killeen?

8 A. Yes.

9 Q. Are you familiar with the system?

10 A. Yes.

11 Q. Do you know where it records to?

12 A. Yes.

13 Q. Where is that?

14 A. It records to a DVD server located in the office.

15 Q. And do you have access to that hard drive?

16 A. Yes.

17 Q. Can you tell looking at a given video whether it came
18 from the Lowe's store in Killeen where you work?

19 A. Absolutely.

20 Q. Does Lowe's keep video surveillance in the regular
21 course of its business?

22 A. Yes.

23 Q. Is it part of Lowe's' business to accurately record
24 the public places and areas inside and outside of the store?

25 A. Yes.

1 Q. Is the surveillance video that's recorded, is that
2 made at the time it's represented on the video itself through a
3 time stamp or at least near that time?

4 A. Yes.

5 Q. I'm going to show you Government's Exhibit 53 for
6 identification. And this is 53A. Do you recognize that? It
7 should be on your screen in front of you.

8 A. Yes.

9 Q. And now I'm going to show you 53B. Do you recognize
10 that photo?

11 A. Yes.

12 Q. And 53C?

13 A. Yes.

14 Q. And what are these photos?

15 A. Those are still shots from video surveillance of a
16 transaction that took place back on July 26th.

17 Q. And do you recognize it as being from your store?

18 A. Yes.

19 Q. And how can you tell?

20 A. From the individuals in there on the video. I
21 recognize the cashier. I recognize the angle in the camera.

22 Q. And those are fair and accurate still photos from the
23 video surveillance from your store?

24 A. Absolutely.

25 MR. SCHNEIDER: Your Honor, the government moves Exhibit

1 53A, B and C into evidence.

2 MR. BOYD: Your Honor, no objection.

3 THE COURT: They're admitted.

4 (Exhibit(s) admitted: G53A, G53B, G53C)

5 BY MR. SCHNEIDER:

6 Q. Okay. So now looking at Exhibit 53A, can you tell us
7 from the still photo when that was taken?

8 A. There's a time stamp at the bottom left-hand corner
9 of the image at 14:07:20.

10 Q. That would be 2:07 in the afternoon?

11 A. That's correct.

12 Q. And does it have a date stamp on it?

13 A. Yes. In the top center 7-26 of 2011.

14 Q. And can you tell from that photo if there's a
15 specific register that's being shown in that --

16 A. Yes.

17 Q. -- photo?

18 A. Above the time stamp it's listed 14-38. That's Lane
19 14, Terminal 38. That's our customer service desk.

20 Q. Do you recognize anything else in the photo? Do you
21 recognize any of the people in the photo?

22 A. Yes. The cashier. She's a current employee with us.

23 Q. Okay. And now I'm going to show you 53B. Is that
24 the same register?

25 A. Yes.

1 Q. Is that the same cashier at the register?

2 A. Yes.

3 Q. And the time stamp on that?

4 A. 14:07:35.

5 Q. And is that the same date?

6 A. Yes.

7 Q. And 53C. Can you tell if that's the same register?

8 A. Yes.

9 Q. And the same cashier?

10 A. Yes.

11 Q. And is it the same date?

12 A. Yes.

13 Q. And what is the time stamp on that?

14 A. It's out of image right now.

15 Q. Can you see it now?

16 A. Yes.

17 Q. What's the time stamp?

18 A. 14:08:03.

19 Q. Okay. Now, in terms of the receipts and transactions
20 that are conducted in Lowe's, are you familiar with the system
21 that records transactions?

22 A. Yes.

23 Q. And how does it work? How are transactions typically
24 recorded at a Lowe's store?

25 A. They're recorded to a dedicated server in the back on

1 a system that we call Genesis.

2 Q. And are you one of the people that has care, custody
3 and control of that Genesis system?

4 A. Yes.

5 Q. And you're familiar with that system?

6 A. Yes.

7 Q. And where does it record the transactions to?

8 A. It records to a server that's downloaded at the end
9 of business each day.

10 Q. And do you have access to that server?

11 A. I have access to it. Yes.

12 Q. Are you generally familiar with the items that are
13 sold in Lowe's?

14 A. Yes.

15 Q. And if you wanted to look up an item to see what it
16 is, are you able to do that?

17 A. Absolutely.

18 Q. And how generally would you do that?

19 A. There are several different ways that you can do that
20 but typically utilizing the Genesis screen you can look up item
21 numbers, bin locations based on breakdowns of where -- where
22 the item is, what type of item it is, that kind of thing.

23 Q. Now --

24 A. Additionally I will say that they can also be looked
25 up online as well.

1 Q. And can you actually see the product --

2 A. Absolutely.

3 Q. -- when you look it up online?

4 A. Yes.

5 Q. Now, can you tell looking at either a receipt or

6 printout of a transaction whether that transaction was

7 conducted and made in Lowe's?

8 A. Yes.

9 Q. And does Lowe's keep these transaction data such as

10 receipts and other transaction reports in its regular course of

11 business?

12 A. Yes.

13 Q. Is it part of Lowe's' business to accurately record

14 those transactions?

15 A. Absolutely.

16 Q. Are the receipts and other transaction data recorded

17 at the time of the sale or at least near the time of the sale?

18 A. Yes.

19 Q. Okay. I'm now going to show you Government's Exhibit

20 No. 54 for identification. Do you recognize this exhibit?

21 A. It's out of focus but yes. It appears to be the

22 Genesis transaction printout of the sale in question.

23 Q. Okay. Can you see it better now?

24 A. Yes.

25 Q. And how do you recognize it?

1 A. Based off of the store number, date, time and the
2 items that are listed.

3 Q. And is that the store number for the Killeen store
4 where you work?

5 A. Absolutely. 0209 in the lower left-hand corner.

6 Q. And did you print this out yourself from the system
7 that you just described?

8 A. Yes. I did.

9 MR. SCHNEIDER: Your Honor, the government moves Exhibit
10 54 into evidence.

11 MR. BOYD: No objection.

12 THE COURT: It's admitted.

13 (Exhibit(s) admitted: G54)

14 BY MR. SCHNEIDER:

15 Q. Now, can you see that exhibit, Mr. Chesser?

16 A. Yes.

17 Q. Looking at that exhibit can you tell us again the
18 date and time of the transaction on that receipt?

19 A. Yes. The time stamps looking in the lower center
20 July 26th, 2011. Time is 14:07:56.

21 Q. And does that date and time match the still photos
22 that you previously identified as Government's Exhibit 53A, B
23 and C?

24 A. Yes. It does.

25 Q. And that's from the surveillance camera system at the

1 Lowe's where you work?

2 A. The photos?

3 Q. The photos were taken from that video system; is that
4 correct?

5 A. Yes.

6 Q. Now, are you able to look at the receipt which is
7 Government's 54 and tell what items were purchased?

8 A. Yes.

9 Q. Okay. Can you tell the first item that was
10 purchased?

11 A. They were -- it was a package of string lights.

12 Q. Okay. I'm going to show you Government's Exhibit 134
13 for identification. Do you recognize that?

14 A. Yes.

15 Q. And have you seen this before?

16 A. Yes. I have.

17 Q. Have you been able to check the product code on this
18 package?

19 A. Not on that specific package.

20 Q. Okay. And would you like to see it?

21 A. That'd be fine.

22 MR. SCHNEIDER: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 BY THE WITNESS:

25 A. Yes, sir.

1 BY MR. SCHNEIDER:

2 Q. Now, looking at Government's Exhibit No. 134, do you
3 recognize that exhibit?

4 A. Yes.

5 Q. Does it match any of the items on the receipt in
6 Government's Exhibit 54?

7 A. It matches the item listed on the top the string
8 light stars.

9 Q. Okay. And what is the next item on the receipt?

10 A. A two inch economy brush Item No. 253307.

11 Q. And showing you Government's Exhibit 106. Do you
12 recognize that item?

13 A. Yes.

14 Q. And what is it?

15 A. It appears to be the same item as listed in the
16 second line, the two inch economy brush.

17 Q. Now, this doesn't have a packaging on it, does it?

18 A. No. It does not.

19 Q. So you can't match up any product --

20 A. Correct.

21 Q. But does the description match?

22 A. Yes.

23 Q. What is the next item on the receipt?

24 A. Medium moving box.

25 Q. Does it say the quantity?

1 A. Yes. Two of them were purchased.

2 Q. I'm showing you Government's Exhibit 144 for
3 identification. Do you recognize this?

4 A. Yes.

5 Q. What is this?

6 A. They're two medium moving boxes.

7 Q. Does it have any markings on it?

8 A. Markings?

9 Q. Any identification on the box? Does it say anything?

10 A. Yes, that it's a medium box from Lowe's.

11 Q. Does it say Lowe's on it?

12 A. Yes.

13 Q. And how many are there in this exhibit?

14 A. Two.

15 Q. Does this match the description on the receipt?

16 A. Yes.

17 Q. And what is the next item?

18 A. 35 yard Gorilla duct tape.

19 Q. Showing you Government's Exhibit 104 for
20 identification. Do you recognize that?

21 A. Yes.

22 Q. And what is this?

23 A. It appears to be a roll of Gorilla duct tape.

24 MR. SCHNEIDER: And, Your Honor, may I approach?

25 THE COURT: Yes, sir.

1 BY MR. SCHNEIDER:

2 Q. Can you tell looking at the tape if it's Gorilla
3 tape?

4 A. Yes.

5 Q. And how --

6 A. Clearly. It's branded on the interior of the roll.

7 Q. And to you does this appear to match the item on the
8 receipt?

9 A. Yes.

10 Q. I'm now showing you Government's Exhibit 138 for
11 identification. Do you recognize that?

12 A. Yes.

13 Q. What is that?

14 A. It is the next item actually listed on the receipt.
15 The quart gel contact cement.

16 Q. And does this match the product number on the
17 receipt?

18 A. Yes.

19 Q. And is there another item on the receipt?

20 A. Gatorade cool blue 32 ounce.

21 Q. Okay. Now, what is the total for the purchases in
22 that receipt?

23 A. Including tax and everything \$39.38.

24 Q. And can you tell from that receipt how it was
25 purchased, whether it was cash, credit card?

1 A. Yes. He paid \$100 in cash.

2 Q. And then received change?

3 A. Yes.

4 MR. SCHNEIDER: Nothing further, Your Honor. Pass the
5 witness.

6 CROSS-EXAMINATION

7 BY MR. BOYD:

8 Q. Can you see that Exhibit No. 54?

9 A. Yes. I can.

10 Q. Now, is anything on Exhibit No. 54 illegal?

11 A. No, sir.

12 Q. Is there anything sold in Lowe's that's illegal?

13 A. No, sir.

14 Q. So no one broke a law by selling it to him at all?

15 A. No, sir.

16 MR. BOYD: Nothing further.

17 MR. SCHNEIDER: Nothing further from the government, Your
18 Honor. May this witness be excused?

19 THE COURT: Yes, sir.

20 MR. FRAZIER: Greg Ebert will be the government's next
21 witness, Your Honor.

22 (The witness was sworn.)

23 DIRECT EXAMINATION

24 BY MR. FRAZIER:

25 Q. And would you please introduce yourself to the ladies

1 and gentlemen of the jury?

2 A. Good morning, ladies and gentlemen. My name is Greg
3 Ebert.

4 Q. And, Mr. Ebert, are you employed currently?

5 A. Part time. Yes, sir.

6 Q. And where do you work?

7 A. I work at Guns Galore in Killeen, Texas.

8 Q. Prior to working at Guns Galore what did you do for a
9 living?

10 A. I was a peace officer for the City of Killeen.

11 Q. And how many years were you a peace officer for the
12 City of Killeen?

13 A. 20 years.

14 Q. And did you retire from the department?

15 A. I did, sir.

16 Q. Okay. And when you retired, what department were you
17 serving in with the Killeen Police Department?

18 A. I was the sergeant in charge of crimes against
19 property.

20 Q. And how long have you worked at Guns Galore?

21 A. Approximately two years.

22 Q. Okay. And Guns Galore -- and what do you do for Guns
23 Galore?

24 A. I'm just a clerk.

25 Q. Okay. I want to ask you if back on July the 26th,

1 2011 you were working on that date at Guns Galore?

2 A. Yes, sir.

3 Q. Okay. In the early afternoon did you come into
4 contact with a man later identified to you as Naser Jason Abdo?

5 A. Yes, sir.

6 Q. I want to show you what's been previously introduced
7 into evidence as Government's Exhibit No. 153A. Do you see
8 that photograph?

9 A. Yes, sir. I can.

10 Q. Do you recognize it?

11 A. Yes, sir.

12 Q. And who is that a photograph of?

13 A. The young gentleman that was in the store on the
14 aforementioned date.

15 Q. Okay. Later did you learn it was Naser Jason Abdo?

16 A. That's correct.

17 Q. Now, the -- about what time of day did the gentleman
18 enter the store?

19 A. Roughly 1:00 p.m.

20 Q. Okay. And at the conclusion of his stay in the store
21 when he left the store that date you were working with -- well,
22 during the transaction with the gentleman -- with Mr. Abdo you
23 were working with someone else, correct?

24 A. Yes, sir. I was.

25 Q. Who was that?

1 A. The young lady's name is Cathy Cheadle. She's a
2 store manager.

3 Q. And when the time came that Mr. Abdo left the store,
4 did you and Ms. Cheadle talk about what had transpired during
5 the transaction, during the events that occurred inside the
6 store between you and Ms. Cheadle and Mr. Abdo?

7 A. We spoke intermittently. We were kind of reluctant
8 to say anything in front of the other patrons that were in the
9 store but during those periods when there was no one shopping
10 we discussed what had taken place and our concerns regarding
11 the young man.

12 Q. All right. And at the end of the day was a decision
13 reached for you to contact friends of yours who work in the
14 Killeen Police Department?

15 MR. BOYD: I'm going to object as to leading.

16 THE COURT: Sustained.

17 BY MR. FRAZIER:

18 Q. What did you do at the end of the day?

19 A. After discussing -- well, actually we had a
20 discussion at some length during the period between 1:00 and
21 5:30 or so and I came to the conclusion that it was probably a
22 wise thing to call one of the lieutenants that I had previously
23 worked with and share those concerns with him, taking the
24 mind-set that at that point it would be up to the police
25 department to decide whether it was prudent for them to take a

1 look at what had taken place or not.

2 Q. All right. And who did you contact?

3 A. I spoke with Lieutenant Patrick Boone.

4 Q. Now, after you spoke with Patrick Boone, did you talk
5 to someone else? At some point did you ever talk to Lieutenant
6 Bradley?

7 A. I spoke with Eric probably a day or two later.

8 Q. Okay. And basically did you report what had
9 transpired in your store to Pat Boone regarding the transaction
10 with Mr. Abdo?

11 A. Yes, sir.

12 Q. Okay. I want to show you what's been previously
13 introduced as Government's Exhibit No. 48. There's five still
14 photos. This is B, C, D and E. Do you recognize those photos?

15 A. Yes, sir.

16 Q. Did you provide a copy of these to someone the
17 following day?

18 A. I did not. Mrs. Cheadle downloaded the information
19 from the in-store video.

20 Q. And was provided to members of the Killeen Police
21 Department?

22 A. That I can't answer, sir. I do not know.

23 Q. Okay. Now, when the transaction took place -- I'm
24 going to show you what's been previously introduced as
25 Government's Exhibit No. 50. Can you see that from where you

1 sit?

2 A. Yes, sir.

3 Q. This is a copy of the receipt of that transaction?

4 A. I believe it to be. Yes, sir.

5 Q. Okay. And the total on here --

6 THE COURT: Sir, it's right there on your right if you can
7 see it easier.

8 THE WITNESS: Okay. Thank you, sir.

9 BY MR. FRAZIER:

10 Q. Sorry about that. I should have directed you to
11 that.

12 What was the total of the sale, the transaction that took
13 place between Guns Galore and Mr. Abdo?

14 A. \$256 and some change.

15 Q. And how was that paid for?

16 A. Cash.

17 Q. And when Mr. Abdo left the store, do you recall how
18 he left?

19 A. He seemed to be in a hurry. He didn't wait for the
20 change. It was just a matter of a few coins. Neither did he
21 ask for a receipt. He just took his purchase and left.

22 Q. And how did he leave? What method of transportation?

23 A. Same mode he arrived. In a taxi cab.

24 Q. Do you know which cab company? What color the cab
25 was?

1 A. It's blue and it has silver lettering on the side of
2 the cab. I apologize. I don't recall the name --

3 Q. Okay.

4 A. -- of the cab company right off the top of my head.

5 Q. And Guns Galore maintains a video surveillance system
6 of transactions and activities that take place in and around
7 the store; is that correct?

8 A. Yes, sir.

9 Q. And are you depicted in that video transaction -- you
10 and Ms. Cheadle along with Mr. Abdo during that transaction?

11 A. I believe so. Yes, sir.

12 MR. FRAZIER: Okay. We'll pass the witness, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BOYD:

15 Q. Good morning, sir. I'm Zachary Boyd.

16 A. Good morning.

17 Q. With regards to the items purchased on the 26th day
18 of July, was that a lawful sale that occurred?

19 A. I believe so. Yes, sir.

20 Q. And nothing you sold was illegal?

21 A. No, sir. It was not.

22 Q. And you developed a concern over the period of around
23 five hours?

24 A. Roughly. Yes, sir.

25 Q. And then you called your friend. I think you called

1 him Eric Bradley?

2 A. Lieutenant Boone, sir.

3 Q. You called -- oh, is it -- who is Eric? You referred
4 to someone as Eric. Who is that?

5 A. I believe the prosecutor brought that gentleman's
6 name up. Eric Bradley is also assigned to the unit over which
7 Lieutenant Boone supervises.

8 Q. Okay. You said you spoke with Eric at some point?

9 A. Couple days after --

10 Q. Okay.

11 A. -- this event.

12 Q. It would be fair to say you're friends, right?

13 A. Yes, sir.

14 Q. Okay. Thank you very much.

15 A. You're welcome.

16 REDIRECT EXAMINATION

17 BY MR. FRAZIER:

18 Q. Sir, did your concerns begin during the transaction?

19 A. Shortly after. Yes, sir.

20 Q. Thank you.

21 MR. FRAZIER: Pass the witness.

22 MR. BOYD: No further questions.

23 THE COURT: You may step down, sir, and you may be
24 excused.

25 MR. FRAZIER: Our next witness will be Eric Bradley, Your

1 Honor.

2 (The witness was sworn.)

3 DIRECT EXAMINATION

4 BY MR. FRAZIER:

5 Q. Would you please introduce yourself to the ladies and
6 gentlemen of the jury?

7 A. Richard Eric Bradley, sergeant City of Killeen Police
8 Department.

9 Q. And how long have you been employed with the Killeen
10 Police Department?

11 A. Since 1997.

12 Q. And where are you -- did you have any prior law
13 enforcement experience before coming to Killeen?

14 A. City of Harker Heights for three years.

15 Q. And prior to that what did you do?

16 A. United States Air Force.

17 Q. And what did you do for the Air Force?

18 A. Law enforcement.

19 Q. How many years did you do there?

20 A. Four years active duty.

21 Q. And what division are you currently assigned to in
22 the Killeen Police Department?

23 A. The organized crime unit.

24 Q. And how long have you worked there?

25 A. Just over a year.

1 Q. All right. Back in July of last year were you
2 working at the organized crime unit?

3 A. Yes, sir. I was.

4 Q. What type of work do you do in the organized crime
5 unit from day to day?

6 A. Sergeant of the unit I oversee detectives that
7 investigate crimes that involve narcotics and gang activity,
8 organized crime, vice crimes, things like that.

9 Q. I want to direct your attention to the date of July
10 26th of last year. Were you working on that date?

11 A. Yes, sir. I was.

12 Q. What time did you come on duty?

13 A. 2:00 o'clock. 2:00 p.m.

14 Q. All right. Around 5:00 o'clock -- not 5:00 --
15 between 5:00 and 6:00, somewhere late in the afternoon did you
16 receive or -- did you receive information from Pat Boone
17 regarding a phone call he had received?

18 A. Yes, sir. Lieutenant Boone is my immediate
19 supervisor. Came into my office advised that he had somebody
20 on the telephone that I needed to speak to.

21 Q. Okay. And who was that person?

22 A. Greg Ebert.

23 Q. Okay. And who is Greg Ebert? Do you know who that
24 is?

25 A. Greg Ebert is a retired sergeant from our department.

1 Q. All right. And what was -- did you talk with
2 Mr. Ebert?

3 A. Yes, sir. I did.

4 Q. And what did you learn from him?

5 A. Mr. Ebert explained that earlier in the day -- he's a
6 clerk at the Guns Galore shop on South Hood Road South 195 and
7 that he had a subject that had come into the store that
8 concerned him a little bit on a particular item that he
9 purchased and just his attitude while he was inside the store.
10 Gave a description of the individual, advised that he had
11 bought six pounds worth of smokeless gun powder. Some of his
12 mannerisms, keeping his sunglasses on. Sergeant Ebert relayed
13 this information, his full description, how he had left the
14 store and his concerns as to why or what drew his suspicion to
15 this person.

16 Q. Okay. And generally what was the concern? From law
17 enforcement's standpoint when you received that information,
18 what did you do with it and what were you concerned about?

19 A. Initially just the items that were purchased, a
20 statement made or a question asked about what does smokeless
21 powder do when you're buying six pounds of it. Other items
22 inside the store purchasing ammunition, a magazine for a
23 subcompact semiautomatic pistol and just the demeanor of
24 keeping the sunglasses on the entire time in the store.

25 Q. Okay.

1 A. That kind of drew his attention, and once he relayed
2 that information to me I was -- piqued my interest, also.

3 Q. Okay. Now, in particular to your law enforcement
4 experience have you worked overseas?

5 A. Yes, sir. I have.

6 Q. And what capacity have you worked -- where have you
7 worked and what capacity?

8 A. I worked in Afghanistan as a police advisor police
9 mentor for 19 months.

10 Q. Okay. And as part of your duties in Afghanistan did
11 you deal with individuals responsible for either making or
12 manufacturing bombs?

13 A. Yes, sir.

14 Q. What are those commonly known as in the military
15 terminology?

16 A. IEDs or improvised explosive devices.

17 Q. Okay. And did you deal with that very much in the
18 time you were in Afghanistan?

19 A. Every time we went out on a convoy it was something
20 we had to be aware of.

21 Q. Okay. Now, let's direct your attention and back to
22 this transaction. After you received the -- talked to
23 Mr. Ebert, did you learn from him how the individual left the
24 store? What manner of transportation?

25 A. He initially advised that he had left in a blue

1 vehicle, a blue taxi cab with white or light colored writing on
2 it which narrowed it down to Luxury Cab Company in Killeen.
3 They're the only cab company that runs with a royal blue paint
4 scheme with light colored writing on it.

5 Q. So what did you do?

6 A. I called Luxury Cab Company and initially spoke to a
7 subject that identified themselves as JT and asked him if he
8 could do some research for me and find out any information on a
9 run that was made to the Guns Galore shop that day on South
10 Fort Hood.

11 Q. Okay. Were you able to find out anything at that
12 time?

13 A. Not initially. They had to actually call me back and
14 initially told me that they had no runs. Nothing's showing
15 that they had made a run to Guns Galore. Based on the
16 information provided by Sergeant Ebert, I knew that there was
17 something more to this and I asked that subject to contact all
18 of his drivers from the day and find out if anybody had made a
19 run and it wasn't until sometime later that I was advised that
20 they had made what he called an off the books run to Guns
21 Galore.

22 Q. Okay. Off the books meaning there wasn't going to be
23 a record of it?

24 A. Correct.

25 Q. Now, what time of day was this that you started

1 contacting the cab companies in Killeen?

2 A. After my -- it was in the evening. It was after my
3 contact with Sergeant Ebert on the phone.

4 Q. All right. And what time was it you got the
5 information concerning the run to Guns Galore?

6 A. After 8:00 o'clock.

7 Q. All right. When you got that information, what did
8 you do?

9 A. I was given information that the subject was
10 initially picked up at the America's Best Value Inn on South
11 Fort Hood Road, taken to the Guns Galore shop on South Fort
12 Hood Road and then eventually dropped off at an Army Surplus
13 store Surplus City off of Willow Springs. With that
14 information I attempted to contact the Surplus City, but at
15 that time they were already closed for the evening.

16 Q. All right. And likewise was Guns Galore already
17 closed?

18 A. Yes, sir.

19 Q. Okay. So what did you do then?

20 A. I took one of my detectives and we went to the
21 America's Best Value to try to do an initial canvass based on
22 the description that I had gotten from Sergeant Ebert. We made
23 contact with the desk clerk and a couple of employees. The
24 only person that they pointed out that was just vaguely in the
25 same ballpark turned out to be a subject that was a contractor

1 working at the DPS facility off of South Highway 195 south of
2 Florence. So he was easily eliminated. Once we were unable to
3 locate anybody matching that description, we left the hotel.

4 Q. About what time was that?

5 A. I'm not sure. It was very late in the evening.

6 Q. Okay. What time did your shift end?

7 A. 12:00 midnight.

8 Q. So what was the next event that happened? Did you go
9 home at 12:00 midnight?

10 A. Yes, sir. Everybody is normally done unless we have
11 an operation going on at midnight and everybody leaves.

12 Q. All right. Do you just basically pass the
13 information on or do you wait -- I mean, what did -- what did
14 you do with the information that you had up to that point?

15 A. I wasn't able to pass any of the information on until
16 the next morning. Lieutenant Boone placed a call to me to see
17 if I had followed up on Sergeant Ebert's information which I
18 did. I explained to him what I had located or found out and he
19 said that since he was out and about that he would continue to
20 follow up on that information for me.

21 Q. Okay. And did you receive a phone call from him
22 later regarding the follow-up?

23 A. Yes, sir. Lieutenant Boone explained that he had
24 made contact with Surplus City and made contact with a clerk
25 and gave the general description that was provided by Sergeant

1 Ebert and was told that a person matching that description had
2 come into the Surplus City and purchased a few items including
3 an Army combat uniform, both the trousers, the pants, the belt,
4 a hat and asked for a name tag of Smith and then asked for
5 patches for the uniform that would be consistent with Fort
6 Hood.

7 Q. When you heard that information, what did you do?

8 A. I was in bed. It was fairly early in the morning and
9 I immediately sat up. I knew something was wrong.

10 Q. When you say something was wrong, what do you mean?

11 A. Somebody was planning something, possibly an attack
12 against soldiers, against Killeen, something. Somebody
13 purchasing a uniform, a large amount of smokeless powder, there
14 was something. Somebody was putting something together.

15 Q. Okay. Were you scheduled to work that day?

16 A. Yes, sir.

17 Q. So did you -- what did you do when you heard that
18 information?

19 A. I told Lieutenant Boone that I was going to get up,
20 get dressed and that I would meet him at the Surplus City and
21 that in the meantime I would attempt to contact the Criminal
22 Investigation Division on Fort Hood to notify them that there
23 was possibly something that was intended to impact soldiers or
24 the military.

25 Q. Okay. And had you had experiences in Afghanistan

1 with similar situations with individuals attempting to disguise
2 their intentions by obtaining uniforms?

3 A. Yes, sir. Working with the Afghan National Police it
4 was common for insurgents or Taliban and antigovernment forces
5 to use -- utilize the Afghan National Police uniform as
6 camouflage to get into an area --

7 Q. All right.

8 A. -- to come in and attack.

9 Q. Now, what did you do then? What steps did you take?

10 A. I was able to get in contact with a CID analyst by
11 the name of Chris Ledford. Made contact with her and requested
12 that she meet me at the Surplus City on Willow Springs. I
13 drove from the house and met Lieutenant Boone at the Surplus
14 City. He advised me that he was made aware of some video
15 footage from the Guns Galore that he was going to go get a copy
16 of and attempt to get some still pictures off of the footage
17 from Guns Galore. He also made mention that the Surplus City
18 manager was also trying to pull up some video from the previous
19 day and at that time he left to go get the video footage and I
20 attempted to start following up on a phone number that I had
21 provided by the cab company that had been used to call the cab
22 initially to the America's Best Value.

23 Q. And as a result of your follow-up and a phone number,
24 what were you able to find?

25 A. Found out that it was a throw away phone, basically a

1 prepaid phone through T Mobile. I initially tried to get
2 information on the subscriber. Never was able to get that
3 information but I did do an exigent form to the T Mobile
4 company through our Bell County Communication Center in an
5 attempt to get the information.

6 Q. Okay. But that ended up being a dead end?

7 A. Correct.

8 Q. Okay. So what did you do next?

9 A. I had to go and fax the form at the office, wound up
10 meeting again with Lieutenant Boone who had obtained some still
11 photos from the video footage at Guns Galore. We took those
12 still photos to the America's Best Value and again attempted to
13 do a canvass of the hotel to see if we could locate a subject.

14 Q. I'm going to show you what's been previously
15 introduced as Government's Exhibit No. 48 and there's five
16 photos. I'm going to thumb through them very quickly.

17 Do you recognize these photos Government's Exhibit 48 A
18 through E?

19 A. Yes, sir. Those are the photos I used for the
20 canvass.

21 Q. In fact this is your actual set of the --

22 THE COURT: You can see them on your screen.

23 BY MR. FRAZIER:

24 Q. I'm sorry.

25 A. I'm sorry. Yes, sir.

1 Q. Are these in fact the actual photos you obtained that
2 you used during your investigation?

3 A. Yes, sir. They are.

4 Q. Okay. When you obtained 48, what did you do with it?

5 A. I'm sorry, sir?

6 Q. When you obtained these pictures Government's 48,
7 what did you do with them?

8 A. I made contact with the desk clerk at the hotel that
9 was on duty at that time. Made contact with some of the
10 housekeepers, and although they all recognized the subject, we
11 still could not get an exact room or a name at that time.

12 Q. Okay.

13 A. The clerk actually went through some of the check-in
14 sheets that have copies of driver's licenses and things like
15 that and picked out a couple that were close and we continued
16 to canvass.

17 Q. All right.

18 A. We also attempted to go back to the manager's office
19 to review some of their video footage, security footage from
20 the day before in an attempt to locate the subject.

21 Q. Okay. During the time that you were there doing the
22 canvass at the hotel, did something happen?

23 A. Yes, sir. Lieutenant Boone notified me -- we were
24 actually back in the manager's office watching the video.
25 Lieutenant Boone -- I'm sorry. Let me back up. We had

1 notified a couple of other detectives from the north precinct,
2 Detective Anita Rinehart and Detective Willie Wingfield. They
3 were in a distinctive police uniform. They came there also and
4 they were in the office with myself watching the video.

5 Lieutenant Boone came into the office and said that he needed
6 me to come outside or actually to the front lobby area and sit
7 with him. Once we got out there he explained that he had
8 observed another Luxury cab out in front of the hotel and just
9 thought we needed to sit there and see if anybody got out to
10 come to that cab.

11 Q. Okay. And at some point did that happen?

12 A. Yes, sir. It did.

13 Q. Okay. What did you observe?

14 A. We were sitting in the lobby area a bunch of tables
15 and chairs set up maybe like a dining area and Lieutenant Boone
16 kind of nudged me and I looked up and I saw a white male
17 walking toward the exit of the hotel exact description had been
18 given to us by Sergeant Ebert, same exact description as in the
19 photos that we were using for the canvass. In the initial
20 photos there was orange University of Texas clothing that was
21 worn. On this particular day it was white University of Texas
22 clothing that was being worn this time also with a ball cap,
23 same sunglasses and the subject was walking towards the front
24 doors to exit the hotel.

25 Q. Okay. And was the individual carrying anything?

1 A. He had a backpack on. A large backpack that was
2 basically full.

3 Q. Okay. And how could you tell it was full? Just
4 from --

5 A. Just -- there was no -- basically no collapsed areas
6 in the backpack. It was all fully extended.

7 Q. Okay. Now, did the individual make eye contact with
8 you?

9 A. For a quick second, yes, sir, and then looked back
10 toward the door.

11 Q. And how were you and Lieutenant Boone dressed?

12 A. In our unit we tend to dress what's called plain
13 clothes. We don't wear a distinctive uniform most of the time.
14 On that particular day Lieutenant Boone had a T-shirt and some
15 cargo shorts on. I was dressed in a pair of blue jeans and a
16 service shirt from a plumbing company.

17 Q. Okay. And what did you do when you saw the
18 individual?

19 A. Lieutenant Boone stood up and started following
20 behind the subject out the front door as I followed Lieutenant
21 Boone out the front doors. Based on the information that we
22 had been provided, the subject had purchased smokeless powder,
23 ammunition, a magazine for a semiautomatic pistol, Lieutenant
24 Boone drew his weapon and advised the person to stop. At that
25 time the person, the male did stop and turned around, kind of

1 gave us a blank stare, had his hands up for a moment, moved his
2 hands in a downward position. The look that he gave us is a
3 term that I use kind of a fight or flight look in which the
4 subject is determining whether or not he's going to engage us
5 or turn around and run. I had not initially drawn my weapon.
6 Based on this -- this action by the subject in case he did run,
7 I needed to give chase. When the subject's hands started
8 coming down, I did produce my weapon and ordered him or advised
9 him not to touch anything and we had the subject lay down face
10 down prone down on the ground.

11 Q. He was detained at that point?

12 A. Yes, sir.

13 Q. All right. And what did -- what actions did you take
14 as soon as the person laid on the ground?

15 A. Lieutenant Boone was able to get on the phone and get
16 ahold of the detectives inside the office. Neither one of us
17 at that moment had access to our handcuffs and so we had the
18 detectives come outside. Detective Wingfield, Detective
19 Rinehart did come outside and the subject was handcuffed by
20 Detective Wingfield. I advised Detective Wingfield to
21 remove -- to slowly remove the backpack from the subject and
22 place it off to the side initially and then he was handcuffed
23 by Detective Wingfield.

24 Q. Okay. And ultimately where was the backpack placed?

25 A. A short time later I advised Detective Wingfield to

1 move the backpack again based on the information that we had of
2 the items that were purchased by the subject to move the
3 backpack between a couple of the pillars out in front of the
4 hotel. That way if there was a device or anything in there
5 that would have exploded we'd have been afforded some type of
6 protection from the pillars out there in front of the hotel.

7 Q. Was that what your concern was?

8 A. Yes, sir.

9 Q. That there was what in the backpack?

10 A. Explosives.

11 Q. All right. Now, I want to show you what's previously
12 been introduced into evidence as Government's Exhibit No. 47.
13 I want you to watch this and I'll ask you some questions about
14 it.

15 (Video played.)

16 BY MR. FRAZIER:

17 Q. In that clip that we just watched can you -- it's a
18 video surveillance from America's Best Value Inn and Suites.
19 Can you tell the jury what we just watched?

20 A. The course of events I explained where Lieutenant
21 Boone and I were sitting in the lobby area, observed the
22 matching -- the person matching the description coming out
23 through the front lobby to the front doors and us exiting the
24 hotel behind him.

25 Q. All right. I show you what's been marked for

1 identification as Government's Exhibits 145 and 146.

2 A. Yes, sir.

3 Q. Can you tell us what 145 and 146 are?

4 A. Appears to be the same clothing the subject had on at
5 the time he was detained.

6 Q. And were these in fact taken by the Killeen Police
7 Department after -- at a later time?

8 A. Yes, sir.

9 MR. FRAZIER: All right. We'll offer Government's
10 Exhibits 145 and 146 into evidence.

11 MR. BOYD: No objection.

12 THE COURT: They're admitted.

13 (Exhibit(s) admitted: G145, G146)

14 BY MR. FRAZIER:

15 Q. Now, did you attempt to engage the -- and for the
16 record I want to show you Government's Exhibit No. 153 and ask
17 you if you recognize the person depicted in this photograph?

18 A. Yes, sir. Naser Abdo.

19 Q. Okay. Was that the defendant -- you later identified
20 as the defendant in this case?

21 A. Yes, sir.

22 Q. Okay. Was that the person you detained outside the
23 America's Best Value Inn and Suites that we just watched on the
24 video?

25 A. Yes, sir.

1 Q. Okay. What -- did you engage Mr. Abdo in any
2 conversation?

3 A. Initially the conversation was between Lieutenant
4 Boone and the subject and basically trying to ascertain what
5 his name was.

6 Q. Okay.

7 A. Lieutenant Boone asked, you know, what his name was
8 and the subject replied that, you know who I am.

9 Q. Okay. And then after handcuffs were placed on the
10 defendant, what happened to him?

11 A. Initially Detective Wingfield was able to locate ID
12 on the subject. Shortly after that I advised Detective
13 Wingfield to go get the patrol car that they had arrived in.
14 Patrol car was parked off to the side, turned off, parked. He
15 had to actually start the vehicle up and bring it over to where
16 we were at to place the subject inside the back of the vehicle.

17 Q. All right.

18 A. Back seat.

19 Q. I want to show you what's been marked for
20 identification as Government's Exhibit No. 74. Can you see
21 that on your screen?

22 A. Yes, sir.

23 Q. And do you recognize it?

24 A. That's the ID that was -- I'm sorry. That was the ID
25 that was found on the subject ID belonging to an Asher Pluto

1 that was removed by Detective Wingfield who in turn gave the ID
2 to me.

3 MR. FRAZIER: We'll offer Government's 74 into evidence,
4 Your Honor.

5 MR. BOYD: No objection.

6 THE COURT: It's admitted.

7 (Exhibit(s) admitted: G74)

8 BY MR. FRAZIER:

9 Q. Now, after the defendant was placed in the police
10 car, what did you do?

11 A. I advised Detective Wingfield to Mirandize the
12 subject prior to any conversations with him. While Detective
13 Wingfield was doing that I had walked I believe inside to speak
14 with Lieutenant Boone or the desk clerk. I'm not sure at that
15 moment who we spoke to. I was advised a short time later by
16 Detective Wingfield that the subject needed to talk to me or I
17 needed to talk to that subject.

18 Q. Okay. When you say Mirandize, are you talking about
19 giving his legal warnings?

20 A. Yes, sir. Read his rights.

21 Q. Okay. And did you go to the car at some -- at that
22 point did you go to the vehicle to speak with the defendant or
23 what happened next?

24 A. When Detective Wingfield advised me that I needed to
25 talk to the subject, I confirmed that he had Mirandized the

1 subject. He advised that he had. So I went to the vehicle and
2 began speaking with the subject.

3 Q. Okay. And that particular interview with the
4 subject, was that -- was that recorded?

5 A. Yes, sir.

6 Q. Okay. And that particular conversation that was
7 recorded was recorded in the vehicle itself, correct?

8 A. Yes, sir. There's a camera system inside the vehicle
9 that records voice and video and it was initiated and it
10 recorded the entire conversation.

11 Q. Okay. And you've had an opportunity previously to
12 view the -- or not to view but to listen to I guess and to view
13 the conversation that took place between yourself and the
14 defendant in the -- that was in the back of the patrol car?

15 A. That's correct, sir. In this particular video it's
16 an older system. It has only a forward pointing camera. It
17 does not have a camera to the rear, but you can hear the video.

18 Q. Okay. So basically the video on it is just facing I
19 guess Fort Hood Street?

20 A. Yes, sir.

21 Q. And but the conversation is you talking with the
22 defendant in the back of the patrol car?

23 A. Yes, sir. It is.

24 MR. FRAZIER: Okay. Your Honor, at this time we'll offer
25 into evidence Government's Exhibit No. 55 that portion of the

1 dash cam video referenced by the witness.

2 MR. BOYD: Your Honor, with respect to this exhibit I
3 believe that this is a portion of an entire sequence that this
4 witness has testified to. I'd request under the rule of
5 optional completeness that the entire videotaped portion be
6 presented in conjunction with this.

7 MR. FRAZIER: Your Honor, we would object because he's not
8 demonstrated what's left out of this video that makes it
9 incomplete. We're only playing a portion just the statements
10 of the defendant, not the entire one hour or two hour video.

11 THE COURT: You will have the opportunity to do -- attempt
12 to do that later.

13 MR. FRAZIER: Okay. If you could -- if I could -- may I
14 approach the witness very briefly, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. FRAZIER:

17 Q. I show you what's been marked for identification
18 purposes as Government's Exhibit No. 55A. You've had a chance
19 to see this previously, haven't you?

20 A. Yes, sir. I have.

21 Q. And what is Government's Exhibit No. 55A?

22 A. It's the dialogue between myself and the suspect.

23 Q. The transcript?

24 A. The transcript.

25 Q. And is it an accurate -- fair and accurate summary of

1 the conversation that portion Government's Exhibit No. 55 that
2 we are about to play?

3 A. Yes, sir.

4 MR. FRAZIER: Your Honor, at this time I would like to
5 pass out copies of transcripts without offering them into
6 evidence of the transcription to the jury.

7 MR. BOYD: Your Honor, I'm going to -- to the extent they
8 have been verified that's one thing, but there's just some
9 inaudible portions of the audio that I don't know have been
10 transcribed properly. So I'm worried about inaccurate
11 transcription notes.

12 MR. FRAZIER: They're -- let me ask the witness.

13 BY MR. FRAZIER:

14 Q. There are portions of this transcript that weren't
15 transcribed because they're inaudible, correct?

16 A. Correct, sir.

17 Q. And they're indicated as such by the letters "UI" or
18 "unintelligible" on the transcript?

19 A. Yes, sir.

20 Q. Okay.

21 MR. BOYD: Your Honor, that's fine.

22 MR. FRAZIER: All right.

23 THE COURT: The jury may be allowed to use them as an aid.

24 MR. FRAZIER: And if I didn't offer Government's Exhibit
25 No. 55, I thought I did, but just to make sure, I'm offering it

1 now. Is it admitted?

2 THE COURT: It's admitted.

3 (Exhibit(s) admitted: G55)

4 MR. FRAZIER: All right. Thank you, Judge. I just wanted
5 to make sure that was cleared up.

6 If you could please play Government's Exhibit No. 55.

7 (Video played.)

8 BY MR. FRAZIER:

9 Q. And in addition, this particular video 55 also has
10 the transcription scrolling across the bottom of it as well,
11 correct?

12 A. Yes, sir.

13 (Video played.)

14 MR. FRAZIER: Okay. Go forward. Proceed.

15 (Video played.)

16 BY MR. FRAZIER:

17 Q. Now, after that conversation -- at the end of the
18 conversation there's someone else speaking with the defendant,
19 correct?

20 A. Yes, sir. Detective Willie Wingfield.

21 Q. All right. And after that conversation took place,
22 what was the next investigative step you took?

23 A. Run the information through our Bell County
24 Communication Center for a warrants check.

25 Q. Okay. And then -- but as far as investigation of

1 what happened, what did you do?

2 A. Went back, made contact with Lieutenant Boone,
3 started notifying agencies of the incident that we had as far
4 as items possibly being in the room that could be concerned for
5 public safety and evacuating the areas around that room in the
6 hotel.

7 Q. Okay. And did you learn from the front desk what
8 rooms the defendant had been in?

9 A. Yes, sir. We did.

10 Q. And do you recall what rooms those were?

11 A. I'm going to refer to my notes, sir.

12 Q. Sure.

13 MR. FRAZIER: We're through with the transcripts by the
14 way, Your Honor. So those can be collected.

15 BY THE WITNESS:

16 A. The room numbers escape me right now, sir. It was
17 200 and something.

18 BY MR. FRAZIER:

19 Q. But there were a couple of different rooms that --

20 A. Yes, sir.

21 Q. -- were -- that you were able to identify?

22 A. Yes, sir.

23 Q. And for one of those rooms whichever one the
24 defendant was staying in last, did your agency attempt to
25 obtain or start the process of getting a search warrant for

1 that room?

2 A. Yes, sir. I made contact with Detective John Bowman,
3 explained to him what we had, the information that we had up to
4 that point and asked him to start working on the probable cause
5 affidavit for application for a search warrant.

6 Q. Okay. And in particular were there -- in addition to
7 other -- what agency contact -- what other law enforcement
8 agency contact did you make?

9 A. I initially contacted or had dispatch contact the
10 Fort Hood Explosive Ordnance Detachment, EOD, bomb disposal
11 unit to initially assess and help us with the backpack. We
12 also contacted -- had them contact the FBI, ATF and federal
13 agencies to assist us.

14 Q. Okay. And Fort Hood EOD, do they essentially -- or
15 do they assist local law enforcement on situations like this
16 where explosives may be present?

17 A. Yes, sir.

18 Q. Okay. I'm going to show you for identification two
19 exhibits. Show you Government's Exhibit No. 75A and 75B. Do
20 you recognize those photos?

21 A. That's the sign in front of the America's Best Value
22 Inn.

23 Q. Are they accurate photos as -- the scene as it
24 appeared back in July of last year?

25 A. Yes, sir.

1 MR. FRAZIER: We'll offer Government's 75A and B into
2 evidence.

3 MR. BOYD: No objection, Your Honor.

4 THE COURT: They're admitted.

5 (Exhibit(s) admitted: G75A, G75B)

6 BY MR. FRAZIER:

7 Q. I'm showing you Government's Exhibit 75A. What is
8 that a picture of?

9 A. The sign -- again the America's Best Value Inn sign
10 in front of the business.

11 Q. And is this the street -- Fort Hood Street that --
12 where the video shows -- where the police video camera is
13 pointed?

14 A. Yes, sir.

15 Q. Okay. And B of 75. What is that a photo of?

16 A. The front parking lot, sir, of the same business.

17 Q. All right. Now, you mentioned earlier in your
18 testimony that the defendant was carrying a large backpack; is
19 that correct?

20 A. Yes, sir.

21 Q. I'm showing you what's been marked for identification
22 as Government's Exhibit No. 56. Do you recognize this?

23 A. The black backpack, sir.

24 Q. Is this the backpack he was carrying?

25 A. Yes, sir.

1 Q. Except it's empty at this time?

2 A. Yes, sir.

3 MR. FRAZIER: Pass the witness, Your Honor.

4 MR. BOYD: Your Honor, if I could have a comfort break.

5 THE COURT: Sir?

6 MR. BOYD: If I could have a comfort break.

7 THE COURT: Can you wait another ten minutes or so when we
8 take our normal break?

9 MR. BOYD: Yes, Your Honor. I just didn't want to
10 interrupt any cross-examination.

11 THE COURT: Go ahead and begin.

12 MR. BOYD: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BOYD:

15 Q. Officer Bradley, you'd previously testified that you
16 spoke to Mr. Greg Ebert on the 26th or is it the 27th?

17 A. On the 26th, sir.

18 Q. Okay. And you're certain that you spoke to him that
19 day?

20 A. Yes, sir.

21 Q. It wasn't a day or two later?

22 A. No, sir.

23 Q. And you also previously just testified that you -- in
24 the course of your investigation you ran into a period of time
25 where on the 26th you kind of stopped investigating for a

1 little bit?

2 A. Yes, sir.

3 Q. And what time was that?

4 A. Around midnight, sir.

5 Q. Around midnight?

6 Now, at some point on the 26th you went to the America's

7 Best Value Inn, correct?

8 A. Yes, sir. I did.

9 Q. And you attempted to locate who you were looking for,
10 correct?

11 A. Yes, sir.

12 Q. And you were not successful?

13 A. No, sir. We were not.

14 Q. Now, at this point you were concerned there may be
15 something going on?

16 A. Yes, sir.

17 Q. And at this point you could have arranged for
18 surveillance to happen?

19 A. Could have.

20 Q. And at that point no surveillance happened, did it?

21 A. No, sir.

22 Q. And you didn't go back to the America's Best Value
23 Inn until sometime the next day?

24 A. Correct.

25 Q. Around what time?

1 A. I'm not sure of the exact time that we made it back
2 to the hotel, sir.

3 Q. Well, just a few minutes before you arrested -- the
4 arrest, right?

5 A. Yes, sir.

6 Q. Now, there's more videos of the arrest, right?

7 A. Yes, sir. There are.

8 Q. And in particular what hadn't been shown to the jury
9 yet is the actual footage outside, correct?

10 A. Yes, sir.

11 Q. And that footage would be able to demonstrate to the
12 jury this conversation you had with Mr. -- with Detective
13 Wingfield with regards to moving the backpack for everyone's
14 safety and all of that, right?

15 A. It would show the video. Yes, sir.

16 Q. But it would demonstrate this conversation that you
17 had, right?

18 A. At some point. Yes, sir.

19 Q. It would be fair to say that you didn't initially
20 know who you had initiated contact with at the America's Best
21 Value Inn, correct?

22 A. Correct, sir.

23 Q. And it would also be fair to say that there was no
24 suspicious behavior in my client walking out the front door
25 that day?

1 A. Not walking out the front door. No, sir.

2 Q. Or even walking down the hall towards the front door
3 that day?

4 A. In and of itself, no. No, sir.

5 Q. And when you drew your weapon and Lieutenant Boone
6 drew his weapon as we saw in that video, y'all were affecting
7 an arrest, weren't you?

8 A. We were detaining the subject.

9 Q. And at some point you testified that somebody read
10 the Miranda rights?

11 A. Yes, sir.

12 Q. In fact, you indicated that you instructed Detective
13 Wingfield to read the Miranda rights?

14 A. Yes, sir. I did.

15 Q. Did anyone else instruct him to read the Miranda
16 rights?

17 A. Not to my knowledge, sir.

18 Q. You didn't observe him read the Miranda rights, did
19 you?

20 A. No, sir. I had stepped away from the vehicle.

21 Q. Okay. Let's go back briefly to some of your previous
22 experiences. You were -- you testified previously to the
23 IEDs --

24 A. Yes, sir.

25 Q. -- in Afghanistan.

1 A. Yes, sir.

2 Q. It would be fair to say that IEDs in Afghanistan
3 aren't made out of smokeless powder, are they?

4 A. I'm not sure of all the components that they use,
5 sir.

6 Q. So are you aware that -- of the nature of smokeless
7 powder?

8 A. What it's used for in reloading ammunition.

9 Q. Okay. At some point you were able to identify Mr.
10 Abdo walking down the hall?

11 A. Walking out to the lobby. Yes, sir.

12 Q. And y'all saw him coming down -- y'all were watching
13 the surveillance and you saw him walking down the hall?

14 A. No, sir.

15 Q. You didn't?

16 A. No, sir.

17 Q. Okay. A cab pulled up?

18 A. Yes, sir.

19 Q. Someone also noticed a cab pulling up?

20 A. Lieutenant Boone.

21 Q. And thought maybe it's connected?

22 A. Yes, sir.

23 Q. And so y'all decided to go check out the lobby?

24 A. Yes, sir. We went to sit in the lobby to see if
25 anybody would approach the taxi.

1 Q. Okay. And so y'all had -- y'all had the ability to
2 observe and monitor?

3 A. In the area that we were sitting in. Yes, sir.

4 Q. And y'all could have continued to observe and monitor
5 as well, right?

6 A. Yes, sir.

7 Q. Are there police procedures in place for when y'all
8 need to do surveillance on people?

9 A. Yes, sir.

10 Q. And is it common practice to initiate surveillance
11 when it's appropriate?

12 A. Yes, sir.

13 Q. So surveillance could have been initiated in this
14 case?

15 A. Yes.

16 Q. And a conscious decision was made not to?

17 A. That's correct.

18 Q. When do you typically read someone their Miranda
19 rights?

20 A. Prior to engaging in conversation that would lead to
21 guilt seeking questions.

22 Q. And you personally never Mirandized Mr. Abdo,
23 correct?

24 MR. FRAZIER: Judge, I'm going to object. This is
25 irrelevant and repetitive.

1 THE COURT: Sustained.

2 BY MR. BOYD:

3 Q. What did you do after you arrested Mr. Abdo?

4 A. Later on after the warrants were confirmed and he was
5 formally placed under arrest, Officer Jennings transported him
6 to the Killeen Police Department jail.

7 Q. And was that the extent of your involvement at this
8 point? Did you do any further investigation into this matter?

9 A. I contacted the other detectives from the special
10 investigative division both from my office, from the burglary
11 unit and from the special missions unit to come assist us at
12 the location to secure the location, to evacuate the location,
13 to contact the appropriate agencies to assist us with that
14 investigation.

15 Q. And between the time that the arrest happened and the
16 first time the explosive ordnance company shows up, how long
17 had passed?

18 A. I'm not sure how long it took Fort Hood EOD to get
19 out there, sir. It was a little bit.

20 Q. Several hours?

21 A. Possibly, sir.

22 Q. About four or five hours?

23 A. I'm not sure.

24 Q. Ultimately did you recover an explosive device on
25 Mr. Abdo?

1 A. I did not, sir.

2 Q. Was there one recovered on him?

3 A. No, sir.

4 Q. Was there one in the backpack?

5 A. Not a device. No, sir.

6 Q. There was nothing in his backpack that could have
7 even been detonated at that point?

8 A. Not in the backpack. No, sir.

9 Q. Or on his person either?

10 A. No, sir.

11 Q. Or in the hotel room either?

12 A. I'm not sure what all was located in the hotel room.
13 I did not inventory the items in there.

14 Q. You haven't done any follow-up investigation?

15 A. I read some reports, sir.

16 Q. And from the reports you've read, you know that there
17 was nothing located in the hotel room that could have been
18 detonated?

19 A. Not at that immediate time. No, sir.

20 Q. But right now you know that?

21 A. Yes, sir.

22 MR. BOYD: Your Honor, I have no further questions of this
23 witness at this time but I would like to reserve him for recall
24 later.

25 THE COURT: All right. Anything further, Mr. Frazier?

1 MR. FRAZIER: Just one follow-up, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. FRAZIER:

4 Q. Did the defendant have a gun and ammunition in his
5 backpack?

6 A. Yes, sir. He did.

7 MR. FRAZIER: Pass the witness.

8 RECROSS-EXAMINATION

9 BY MR. BOYD:

10 Q. The ID card that was put into evidence, 74, that was
11 located in his backpack, right?

12 A. I'm not sure exactly where Detective Wingfield
13 removed it from the subject at that time. I'm not sure if it
14 was in his back pocket or the backpack, sir.

15 Q. Well, you had this -- so the backpack -- let me just
16 try and understand this.

17 A. Actually I can clarify that. Nobody opened anything
18 in the backpack until the EOD team moved it and examined it;
19 therefore, the ID card would have had to have been on his
20 person in his pocket.

21 Q. Or the backpack would have had to have been opened
22 prior to?

23 A. That's correct.

24 MR. BOYD: Nothing further.

25 MR. FRAZIER: Nothing further, Your Honor.

1 THE COURT: You may step down, sir. We'll take our
2 morning recess at this point.

3 LAW CLERK: All rise.

4 (Jury exited the courtroom at 10:23.)

5 LAW CLERK: Court will stand in recess for 20 minutes.

6 (A break was taken from 10:25 to 10:44.)

7 LAW CLERK: All rise.

8 (The jury entered the courtroom at 10:44.)

9 THE COURT: Be seated, everyone.

10 MR. SOFER: Government calls Sergeant Brad Grimes, Your
11 Honor.

12 (The witness was sworn.)

13 DIRECT EXAMINATION

14 BY MR. SOFER:

15 Q. Good morning, Sergeant Grimes.

16 A. Good morning.

17 Q. Please tell the members of the jury by whom you're
18 employed.

19 A. The United States Army.

20 Q. And what is your position with the Army, sir?

21 A. Currently I am an explosive ordnance disposal
22 technician.

23 Q. Okay. We keep hearing throughout this trial EOD. Is
24 that an acronym for the -- what you just described?

25 A. Yes. It is.

1 Q. And can you tell the members of the jury your rank as
2 if they couldn't see it on your uniform?

3 A. Sergeant first class.

4 Q. How long have you been with the United States Army,
5 sir?

6 A. 18 years now.

7 Q. And how long has your specialty been EOD?

8 A. 11 of those years.

9 Q. Can you describe for the ladies and gentlemen of the
10 jury the training that you have gone through to become an EOD
11 specialist or is it -- is your title EOD specialist or
12 technician?

13 A. Technician.

14 It begins with attending a course down in Eglin Air Force
15 Base. It's Naval School Explosive Ordnance Disposal.

16 Q. Okay. How long does that course take?

17 A. A year.

18 Q. And do you attend that school for an entire year?

19 A. Yes. You do.

20 Q. And did you graduate?

21 A. Yes. I did.

22 Q. Have you taken additional classes since then?

23 A. Yes. I've taken multiple courses for different
24 aspects of that title.

25 Q. Okay. Can you -- what year did you go through the

1 training down at Eglin Air Force Base?

2 A. That was 2000.

3 Q. Okay. And can you describe for the members of the
4 jury some of the other classes or areas that you've studied?

5 A. Yes. I'm going to refer to some of my notes, but
6 advanced improvised explosive devices. I was an instructor. I
7 also attended the course and I became an instructor of the
8 course.

9 Q. Okay. And is another name for improvised explosive
10 device, that also goes by an acronym like everything else in
11 the government. It's called IED; is that correct?

12 A. That's correct.

13 Q. Okay. What else, sir?

14 A. The NATO advanced IED course in Kyneton, England.
15 The humanitarian demining course, the -- the global
16 antiterrorism awareness course, the -- and that's referred to
17 as GATER. That's a course that goes over the current threats
18 in theaters of operation.

19 Q. And what other courses have you taken?

20 A. The SPARTA IED WMD threat assessment and task
21 management, defense nuclear weapons school, radiological
22 emergency team operations, the county improvised disposal
23 device course.

24 Q. Okay. Is it fair to say you've taken a lot of other
25 courses? About how many are we talking about here?

1 A. About 15.

2 Q. Okay. Have you received on-the-job training as well?

3 A. Yes. I have. We do -- consistently we're training
4 to keep current on techniques, trends and things that are
5 developing. We do refreshers which is biannual at the company
6 and battalion level of training and we're daily researching new
7 and what we would call important trends.

8 Q. Okay. Has some of the training that is on-the-job
9 training taken place overseas?

10 A. Yes. It has. I've served five years as an explosive
11 ordnance technician in Europe and also been deployed to
12 Afghanistan, Kosovo and Iraq.

13 Q. And during your deployments overseas did you
14 encounter and observe IEDs in your work?

15 A. Yes. I did.

16 Q. Basically can you tell the members of the jury what
17 it is your job is when encountering such a device?

18 A. My job is to neutralize and defeat any device
19 encountered.

20 Q. And just a very broad estimate, during the course of
21 your time as an EOD technician, can you tell the members of the
22 jury approximately how many IEDs you have observed or made safe
23 in your career?

24 A. I would say approximately 500.

25 Q. Are you also -- are you a supervisor of other IED

1 technicians?

2 A. Yes. I am. I've served as a platoon sergeant. My
3 role once obtained has been an explosive ordnance disposal team
4 leader and I've also served as first sergeant for an explosive
5 ordnance disposal company. I'm currently serving as the
6 operations noncommissioned officer in charge of five companies
7 as they respond and I basically ensure that everything is done
8 correctly and we receive all operations and divvy those down to
9 the companies.

10 Q. So approximately how many men and women do you
11 presently supervise? Approximately?

12 A. Approximately 250.

13 Q. I want to direct your attention to July 27th, 2011.
14 Were you working on that day?

15 A. Yes. I was.

16 Q. Could you tell the members of the jury in what
17 capacity?

18 A. I was at the time the first sergeant for the 797th
19 Ordnance Company EOD and I was also the team leader on call at
20 the time.

21 Q. Okay. As the team leader on call did you receive a
22 call of an incident?

23 A. Yes. I did.

24 Q. Without going into too much detail, can you tell us
25 basically what kind of information you received?

1 A. I received information that -- that the Killeen
2 Police Department was at a local hotel and they had apprehended
3 a person and they were -- they had a backpack that was at --
4 what we call a suspect item at that time.

5 Q. Okay. And suspect item would mean what?

6 A. That they believed that there were an explosive
7 threat within that backpack.

8 Q. Okay. Do you remember what hotel this was?

9 A. Yes. It was the American Best Value Suite.

10 Q. Okay. Did you go to that hotel?

11 A. Yes. I did.

12 Q. And that was in Killeen?

13 A. Yes, sir.

14 Q. Here in the Western District of Texas?

15 A. Yes, sir.

16 Q. I'm going to show you what's been previously entered
17 into evidence as Government's Exhibit A -- sorry. 75A. Is
18 that Government's 75A the hotel you responded to?

19 A. Yes, sir. It is.

20 Q. I'm going to show you what's been previously admitted
21 into evidence as 75B. Is that another photograph of the hotel
22 that you responded to?

23 A. Yes, sir. It is.

24 Q. How did you get to the hotel?

25 A. I traveled by a government vehicle. Our explosive

1 ordnance disposal response vehicle.

2 Q. And about how long between the time you received the
3 call was it before you got there, if you recall?

4 A. Let me refer to my notes. What I'm looking at is my
5 incident sheet, and the time it was reported to me was 1330 and
6 we departed at 1345.

7 Q. Okay. About how far away were you approximately give
8 or take?

9 A. I would say we were approximately two miles.

10 Q. Okay. Did you go alone or did someone go with you?

11 A. No. My team member went with me.

12 Q. And who was that?

13 A. Sergeant Juan Hong.

14 Q. Okay. And did you take anything with you?

15 A. Yes. I took my -- the explosive ordnance response
16 vehicle is loaded out for emergency response with all of the
17 basic EOD tools.

18 Q. Okay. When you say tools, what kind of things are we
19 talking about?

20 A. We're talking about the advance robotic system.
21 There are -- there's rope, pulleys, x-ray devices, everything
22 that an EOD team would need to explore and mitigate any type of
23 explosive threat.

24 Q. Okay. Does that include explosives as well? Your
25 own explosives?

1 A. Yes. They're held in a bunker and we have to travel
2 from our responding unit to that bunker, procure whatever
3 explosives deemed necessary for the call and then head out to
4 the call.

5 Q. And did you do that in this case?

6 A. Yes. I did.

7 Q. I want to show you what's been marked Government
8 Exhibit No. 75C for identification only. Can you tell the --
9 can you tell us what 75C is?

10 A. That is the robotics platform that we used on the
11 27th.

12 Q. Okay. You say robotics platform. It's a robot?

13 A. Yes.

14 Q. And how about 75D? Is that also a picture of the
15 same robot?

16 A. Yes. It is.

17 Q. Are they both fair and accurate representations of
18 the device that you took with you on that particular day?

19 A. Yes.

20 MR. SOFER: At this time the government moves 75C and D
21 into evidence. They've previously been shown to Counsel.

22 MR. BOYD: I have no objection to those, Your Honor.

23 THE COURT: They're admitted.

24 (Exhibit(s) admitted: G75C, G75D)

25 BY MR. SOFER:

1 Q. Let's publish those. Again can you give the jury a
2 basic idea of why it is that you have a robot and what the
3 robot does?

4 A. The robot is used as a recon device and also used as
5 what we call -- the robot is used as a safe separation device
6 to where things can be opened, moved and mitigated and
7 inspected so that a person doesn't have to be right on the
8 device in case the device functions and explodes. Then you're
9 looking at a down robot versus a down person.

10 Q. And in addition to the robot do you have other
11 protective gear that you bring out to a scene, a call like
12 this?

13 A. Yes. We bring the bomb suit with us and our normal
14 black vest, helmet which is made of kevlar and carry plates in
15 it also.

16 Q. Okay. And were those things also taken with you on
17 July 27th when you responded to the America's Best Value Inn
18 and Suites?

19 A. Yes.

20 Q. Did there come a time when you arrived at the hotel?

21 A. Yes.

22 Q. And can you tell the members of the jury what you did
23 when you arrived?

24 A. When I arrived I approached the Killeen Police
25 Department that was on site, established who the on scene

1 commander was and had him tell me what has happened since the
2 phone call, has anything else taken place. Once that was
3 established I looked over the scene and he identified a
4 backpack that was under the overhang of the hotel in the front
5 right by the front door. So that was the backpack that was in
6 question. I ascertained the size of the backpack and from
7 where police officers were located. Some were not in a far
8 enough safe distance so I advised him that we needed to push
9 the cordon out to the road and spread people to a safe
10 distance.

11 Q. Okay. When you say the cordon, do you mean -- what
12 do you mean by this?

13 A. A cordon is an area that is pretty much no people are
14 allowed to be in for their safety. So everyone is removed from
15 that area.

16 Q. Okay. And to your knowledge was the hotel itself
17 evacuated at the time that you arrived?

18 A. Yes. It was. I was told the hotel was completely
19 evacuated.

20 Q. Okay. What did you do next?

21 A. Once the cordon was established, I took a look around
22 to get a better feel of the area and I directed my team member
23 Sergeant Hong to remove the robot from the truck and remove the
24 bag to -- with the robot from the hotel in case that it was in
25 fact a device and explode then that'll minimize the damage to

1 the hotel. So he moved it to the far corner of the parking
2 area of the hotel and there was an approximately six feet wall
3 in that far corner made of cement and a metal trash Dumpster.
4 So between the wall and the trash Dumpster is where I directed
5 him to place that bag with the robot.

6 Q. Okay. In Government's Exhibit 75B which direction of
7 the hotel did you move it? Towards the flag that's up there on
8 the -- for me it's the left side of the photo or towards the
9 right side where there's a red awning. Which side of the hotel
10 did you move the backpack to?

11 A. To the left side with the red awning.

12 Q. Okay. So for you it's the left side.

13 And why did you choose to move it near the Dumpster and
14 the wall?

15 A. Because that was the furthest point away from the
16 hotel and that wall was high enough and thick enough that if
17 that device -- if that bag was filled with any type of
18 explosive and would explode, then that wall would contain most
19 of that explosion along with the metal Dumpster.

20 Q. What did you do next?

21 A. At that point I -- I had my team member Sergeant Hong
22 dress me out in the bomb suit. I gathered some tools which one
23 of those tools was an x-ray and I walked the x-ray down to
24 the -- where the bag was sitting and came back up range to
25 where my team member and my truck was and took a few x-rays of

1 the bag.

2 Q. And what, if anything, did the x-ray reveal?

3 A. It revealed some mechanical devices that we -- the
4 gears was consistent with clocks. Also it revealed some wires.
5 It revealed what we saw at the time was -- it appeared to be
6 some type of electronic package that was consistent with a
7 computer but we did not see where everything was connected. We
8 was looking for explosives and an initiator. We couldn't see
9 that in the x-rays also. So we moved into our next phase.

10 Q. Okay. And what was that?

11 A. We -- which was suit me up in the bomb suit so that I
12 can remotely open the bag.

13 Q. Okay. And when you say remotely open the bag, can
14 you explain to the members of the jury what you did next?

15 A. Yes. Once in the bomb suit I walked down to the bag
16 with ropes, with two ropes actually and D rings and some zip
17 ties and some vise grips I -- and pinions. I put zip ties on
18 all of the zippers on the bag. I pinioned the bag to the
19 cement or the asphalt so that it wouldn't move. Then I
20 connected those ropes to each of the zippers and went back to
21 the safe area and pulled which opened each section. The bag
22 had multiple pockets so my plan was to open up each pocket one
23 at a time.

24 Q. Okay. When you did that, what did you observe?

25 A. I observed items falling out of the bag. Some of the

1 items that came out of the bag in different pulls was a
2 notebook, a laptop, still in a box some clocks, some wires,
3 some nine volt batteries and a handgun.

4 Q. Okay. And I want to show you what's been marked
5 Government Exhibit No. 75E for identification and ask if you
6 recognize that?

7 A. Yes. I do.

8 Q. Tell us what that is. It's a photograph, right?

9 A. Yes. That's a photograph of the area and the
10 backpack and all of the items that were pulled out of the
11 backpack.

12 Q. And is it a fair and accurate representation of what
13 those items looked like on that particular day after they were
14 removed from the backpack?

15 A. Yes.

16 MR. SOFER: At this time the government offers Government
17 Exhibit No. 75E for identification into evidence.

18 MR. BOYD: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (Exhibit(s) admitted: G75E)

21 BY MR. SOFER:

22 Q. When you approached these items -- well, what did you
23 do -- after it was open, what did you do next?

24 A. As you can see, everything is opened. It wasn't in
25 that configuration when it came out of the backpack. So it's

1 part of my procedures to make sure all items are safe and does
2 not contain threat. So all of the clocks I crushed the
3 cardboard to ensure that they contained nothing that would have
4 been dangerous. And any container that was closed I opened.
5 The handgun when it fell out of the backpack, I gained control
6 of it. It had a magazine in the magazine well so I dropped the
7 magazine well. I slid the slide to the rear and locked it to
8 the rear and when I did that a round came out of the chamber.

9 Q. And were there additional rounds that you could see
10 in the magazine itself?

11 A. Yes. There were.

12 Q. At this juncture were you wearing a bomb suit still?

13 A. Yes.

14 Q. And can you tell the jury what your primary focus was
15 at this point?

16 A. To clear all items -- the backpack and all items
17 found in the backpack of any explosive hazards.

18 Q. Okay. Did you review any of the items in the
19 notebook that's pictured there in Government Exhibit 75E in
20 evidence?

21 A. Yes. I did. While down there verifying -- once I
22 had verified that there were no fully functioning device in the
23 backpack, I opened the notebook and briefly read through some
24 of the pages that were contained in it.

25 Q. Okay. And what, if anything, happened after you read

1 those pages?

2 A. I determined from reading the pages a viable threat.
3 I saw some articles on how to shoot a handgun, How To Build A
4 Bomb In The Kitchen Of Your Mom. I flipped through that and
5 some of the items that were listed in that and also in the
6 notebook listed out were some of the same items that I found in
7 the backpack that's laid out on that picture.

8 Q. Okay.

9 A. So I took the notebook back to the safe area and had
10 a discussion with my team member of what was down range what I
11 discovered and what was in the notebook. We looked through the
12 notebooks and at that point I ascertained that based on the
13 notebook and what it contained and the items that were found in
14 the backpack that this was a viable threat. So I took that to
15 all of the policing agencies that were on scene at that time
16 and explained everything that we had found and that we needed
17 to investigate further and see whether or not in any areas that
18 the owner of the backpack had been if there's an actual device
19 in that area.

20 Q. Okay. I want to go through the items that you found
21 in the backpack and the backpack itself. I'm showing you
22 Government's Exhibit No. 56 for identification. Do you
23 recognize it?

24 By the way, you've looked at all of these items back in
25 the United States Attorneys office at some point, correct?

1 A. Yes. I did.

2 Q. Again showing you 56 for identification. Do you
3 recognize this?

4 A. Yes. That's the backpack.

5 Q. And is it in substantially the same condition it was
6 that day except for being empty?

7 A. Correct.

8 Q. By the way, is this twist tie yours or do you know
9 whether this was on -- does this look like one of your twist
10 ties?

11 A. Yes. That's one of my twist ties that I put on to
12 open it.

13 Q. Show you what's been marked Government's Exhibit Nos.
14 57 and 58 for identification. Do you recognize these?

15 A. Yes.

16 Q. What are these?

17 A. Those are the clocks that I found in the backpack and
18 crushed the cardboard on.

19 Q. Show you what's been marked Government's Exhibit No.
20 59 for identification. Can you see from there what that is?

21 A. Yes. I can.

22 Q. Tell the members of the jury.

23 A. Those are the nine volt batteries that was inside of
24 the backpack.

25 Q. I'm going to show you what's been marked Government

1 Exhibit No. 60 and 61. Do you recognize these?

2 A. Yes.

3 Q. Tell the members of the jury what they are.

4 A. That is the wire that came out the backpack, also.

5 Q. And all the items I'm showing you are in
6 substantially the same condition as they were when they were
7 recovered; is that correct?

8 A. That's correct.

9 Q. When you saw them?

10 For these --

11 MR. SOFER: If may I approach briefly, Your Honor.

12 THE COURT: Yes, sir.

13 BY SOFER:

14 Q. I'm going to show you 62, 63, 64, 65, 66, 67 and 68.
15 Can you tell the members of the jury if you recognize those
16 items?

17 A. Yes. I can.

18 Q. Tell the members of the jury how they were configured
19 on July 24th when you saw them.

20 A. Yes. When the notebook was lying on the ground after
21 the pull, these items were stuffed inside of the notebook and
22 the notebook was laying flat on the ground.

23 Q. Okay. So looking at Government Exhibit 75E, is that
24 essentially how they were configured when you saw them on July
25 27th of 2011?

1 A. Yes. It is.

2 MR. SOFER: Approaching the witness.

3 BY MR. SOFER:

4 Q. Showing you what's been marked Government Exhibit No.

5 69. Do you recognize this one?

6 A. Yes. I do.

7 Q. What is that?

8 A. That is the Atlas that was also in the backpack.

9 Q. Can you see from there Government Exhibit No. 70 for
10 identification?

11 A. Yes.

12 Q. Do you recognize this?

13 A. Yes. That is one of the magazines that was -- that
14 was a magazine in the firearm. So I believe that's the
15 magazine that came out of the firearm.

16 Q. Okay.

17 A. That had rounds in it.

18 Q. And the rounds that are contained inside Government
19 Exhibit No. 70, they weren't in this cellophane or plastic
20 container that --

21 A. No. They were not. They were in the magazine.

22 Q. Okay. Was one of them in the chamber?

23 A. Yes. It was.

24 Q. As far as you recall?

25 A. Yes.

1 Q. Let me show you what's been marked Government Exhibit
2 No. 70 for identification. Do you recognize this?

3 A. Yes. I do.

4 Q. Can you tell the members of the jury what this is?

5 A. Those are the 20 gauge shotgun shells that were in
6 the box in the bag in the backpack.

7 Q. Okay. Some of these have been cut open. Were they
8 cut open by you?

9 A. No. They were not.

10 Q. Okay. When you looked at them did they have Q
11 numbers or FBI lab numbers on them?

12 A. No. They did not.

13 Q. But they do now, correct?

14 A. Yes.

15 Q. Otherwise it's the same as it was when you saw it?

16 A. All the shells were inside of the box and I cut the
17 box open and the shells were still intact in the box.

18 Q. Okay. My colleagues remind me I called this 70.
19 It's actually 71.

20 Show you what's been marked Government Exhibit No. 72 for
21 identification. Do you recognize this?

22 A. Yes. I do.

23 Q. Tell us what it is.

24 A. That is the box that contained the laptop that was in
25 the backpack.

1 Q. Okay. Have you had an opportunity to look at this as
2 well?

3 A. Yes. I did.

4 Q. And there is a computer in here, correct?

5 A. Yes. And I opened that. It was already opened
6 originally, but I cut open an area that I felt safe to
7 determine that it was what it appeared to be.

8 Q. Okay. I'm going to show you Government Exhibit No.
9 73 for identification. Do you recognize this?

10 A. Yes.

11 Q. Can you tell the members of the jury what that is?

12 A. That is the handgun that was inside of the backpack.

13 Q. And that's the handgun that you made safe?

14 A. Yes, sir.

15 Q. Show you what's been marked Government Exhibit No. 76
16 for identification. Do you recognize this?

17 A. Yes. I do.

18 Q. Tell the members of the jury what this item is.

19 A. That is a cell phone box that was -- after we had
20 entered the room it was found in Room 248.

21 Q. We got a little ahead of ourselves. So we'll stop at
22 73.

23 THE COURT: Counsel, let me interrupt you.

24 MR. SOFER: Yes, sir.

25 THE COURT: For the benefit of the jury, when you -- when

1 he said -- the handgun was made safe, what does that mean?

2 MR. SOFER: My apologies, Judge.

3 BY MR. SOFER:

4 Q. Can you describe for the members of the jury what
5 make safe means with respect to the gun?

6 A. Okay. In the EOD world whenever the scene is
7 explosively free we still are not allowed to bring anyone down
8 to that scene until all items are in a safe condition and then
9 in this case the handgun which had the magazine and the round
10 chambered I had to remove the magazine and remove the round out
11 of and make sure that that handgun would be safe for handling
12 without firing.

13 Q. Okay. Essentially you unloaded it; is that right?

14 A. Yes.

15 Q. Okay. And again all the items I just showed you were
16 in essentially the same condition as they were at the time that
17 you saw them; is that correct?

18 A. Yes.

19 MR. SOFER: At this time the government offers 56 through
20 73 into evidence, Your Honor.

21 MR. BOYD: Your Honor, I have no objections.

22 THE COURT: They're admitted.

23 (Exhibit(s) admitted: G56 thru G73)

24 BY MR. SOFER:

25 Q. Again, the shotgun shells contained in 71 which is

1 now in evidence, when you found them they weren't cut like
2 this, correct?

3 A. No. They were not. They were all intact and in the
4 box.

5 Q. Have you learned that the FBI's crime lab in
6 Quantico, Virginia did this?

7 A. Yes. I was told that.

8 Q. Okay. At this juncture what did you do next,
9 Sergeant?

10 A. At this juncture after we discussed that in order for
11 me to determine that the scene was safe to turn over that I
12 needed to ensure that the room that the person that owned the
13 backpack was in that that didn't have a device in it either.
14 So at that time the policing agencies that were on scene had a
15 discussion and I was told that I needed to wait before I can go
16 into that room until they obtained a search warrant.

17 Q. Okay. And you had said earlier that there were
18 things in the -- inside the notebook -- papers inside the
19 notebook which caused you particular concern; is that right?

20 A. Yes.

21 Q. I want to show you what's been marked Government
22 Exhibit No. 75F for identification. Do you recognize that
23 document?

24 A. Yes. That's one of the pages of the notebook that
25 came out of the backpack.

1 Q. Okay. And does it appear here as it did that day?

2 A. Yes. It does.

3 MR. SOFER: Government moves 75F into evidence.

4 MR. BOYD: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Exhibit(s) admitted: G75F)

7 BY MR. SOFER:

8 Q. What about this list caused you concern, sir?

9 A. Well, the items on the list which caused me concern
10 because those items were items that were also a part of the
11 article How To Build A Bomb In The Kitchen Of Your Mom and that
12 describes taking those items and making them into a functioning
13 explosive device.

14 Q. That's that other article that you read. That was
15 also in the notebook?

16 A. Yes.

17 Q. Okay. And this in combination caused you concern?

18 A. Yes. It did. Because some of the items that's on
19 that list were also in the backpack.

20 Q. Okay. And I'm going to show you what's been marked
21 Government Exhibit No. 75G for identification. Did this
22 document cause you concern as well?

23 A. Yes. It did.

24 Q. And among other things it's got Osama Bin Laden's
25 name on it, correct?

1 A. Yes. It does.

2 Q. And again does this document appear the way it did on
3 that particular day?

4 A. Yes. It does.

5 Q. Fair and accurate representation of what you saw?

6 A. Yes, sir.

7 MR. SOFER: At this time the government moves 75G into
8 evidence.

9 MR. BOYD: No objection.

10 THE COURT: It's admitted.

11 (Exhibit(s) admitted: G75G)

12 BY MR. SOFER:

13 Q. You said you looked at the article How To Build A
14 Bomb In The Kitchen Of Your Mom. Did you explain what you had
15 learned to other officers at the scene?

16 A. Yes. I went through each page of the notebook and of
17 the articles on the scene showing them all the things that were
18 found and that that were these things in combination with the
19 items that were found in the backpack would all together
20 equated to a viable threat.

21 Q. Okay. And what did you do next?

22 A. We waited.

23 Q. And did there come a time when you were given
24 authority to conduct further searches?

25 A. Yes, sir.

1 Q. Where were those searches conducted?

2 A. Inside of the hotel in Room 230 and Room 248.

3 Q. Okay. And do you recall which of those rooms you
4 searched first?

5 A. Yes, sir. We searched Room 230 first.

6 Q. Again this was done at the America's Best Value Inn,
7 correct?

8 A. Yes, sir.

9 Q. And when you conducted these searches did you don any
10 protective gear?

11 A. Yes, sir. I once again donned the bomb suit.

12 MR. SOFER: Okay. Can we play 47, Cut 7 which is already
13 in evidence? And if you can, pause it.

14 BY MR. SOFER:

15 Q. I don't know how well you can see there. Looks like
16 something out of a science picture movie, but could you please
17 tell the jury if you can are you in that picture to your
18 knowledge?

19 A. Yes. I am.

20 Q. And can you describe to the jury what's happening
21 there?

22 A. Well, in the bomb suits it is myself and a civilian
23 bomb technician and we are coming up the stairs of the hotel
24 along with two other members. One was my team member and the
25 other was a civilian technician's team member and we was

1 bringing all items to a down -- what we call a down range safe
2 area. An area far enough away from the rooms but close enough
3 that we can get needed tools that -- while we was down range.

4 Q. Okay. Did you ultimately conduct a search of Room
5 230?

6 A. Yes. I did.

7 Q. And can you describe for the members of the jury
8 again what your primary goal was in conducting that search?

9 A. My primary goal when entering the room was identify
10 an explosive threat and to mitigate that threat.

11 Q. I want to show you what's been marked Government
12 Exhibit No. 147-1 for identification. Tell us what that is.

13 A. That is a picture of the door to Room 230.

14 Q. And again is it how it appeared on that particular
15 day?

16 A. Yes, sir.

17 Q. And I'll show you Government Exhibit No. 2 for
18 identification -- 147-2 for identification. Do you recognize
19 that?

20 A. Yes. That is the inside of Room 230.

21 Q. Okay. Is that a -- does that picture represent the
22 items that were present in the room or some of them?

23 A. Yes. That does depict some of the items that were in
24 the room.

25 Q. Okay. And does it fairly and accurately depict the

1 items themselves?

2 A. Yes. It does.

3 MR. SOFER: At this time, Your Honor, government moves
4 147-1 and 2 into evidence.

5 MR. BOYD: No objection, Your Honor.

6 THE COURT: They're admitted.

7 (Exhibit(s) admitted: G147-1, G147-2)

8 BY MR. SOFER:

9 Q. I won't show you the outside, but this is -- can you
10 see that clearly?

11 A. Yes. I can see it.

12 Q. Okay. I want to go through with you the items that
13 were present in the room, but before I do that can you please
14 explain to the members of the jury what you did when you
15 entered the room?

16 A. Okay. When I got to the room, the room door was
17 already cracked open. So I took a -- well, I assured that
18 there were no boobie traps going into the room using a laser
19 pointer and a flashlight and a mirror and took a look around
20 the entrance first and then once I had entered the room I
21 searched the rest room because that was the immediate room to
22 my right. Once I searched that room I came from there and
23 focused on the main area.

24 Q. Okay. And essentially what were you doing as you
25 went through the room?

1 A. Searching the room for boobie traps and explosive
2 devices.

3 Q. Okay. Were you collecting evidence for any kind of
4 case at that juncture?

5 A. No. Not at all.

6 Q. Okay. I'm going to go through with you now the items
7 that were inside of Room 230. There's a lot of them. So it
8 may take a little bit of time. Start with 85 and 86.
9 Government Exhibit No. 85 and 86 for identification. Do you
10 recognize these objects?

11 A. Yes. I do.

12 Q. Okay. Were they inside Room 230?

13 A. Yes. They were.

14 Q. Okay. And again do they appear substantially the
15 same as they did on that day?

16 A. Yes, sir.

17 Q. Do you recall whether this, that is 85, was inside of
18 86 the box?

19 A. Yes. I do and it was.

20 Q. And was this part of -- you said you were opening --
21 did you open packages while you were in there?

22 A. Yes. I did. Same as the backpack. Any item that
23 was contained I opened that package to ensure that it was as it
24 appeared and it did not contain an explosive device.

25 Q. Okay. Now, Government Exhibit No. 87 for

1 identification. Do you recognize that?

2 A. Yes. I do.

3 Q. Tell the jury what that is.

4 A. That is a drill bit case that was found in Room 230.

5 Q. Again Government Exhibits 88 and 89. Can you tell us
6 what that is?

7 A. Yes. Those are two clocks that were also found in
8 Room 230.

9 Q. Okay. Did you find numerous containers of black
10 powder?

11 A. Yes. I did.

12 Q. And I'll show you Government Exhibit No. 90. Is that
13 one of them?

14 A. Yes. It is.

15 Q. Do you recall whether they were opened or closed?

16 A. They were closed.

17 Q. I'm sorry. Smokeless powder I should have said.

18 A. Yeah.

19 Q. Government Exhibit No. 91?

20 A. Yes.

21 Q. Same kind of smokeless powder?

22 A. Yes, sir.

23 Q. Same -- it was smokeless powder a bottle of it?

24 A. Yes, sir.

25 Q. 92. Is that one of the bottles?

1 A. Yes. It is.

2 Q. 93?

3 A. Yes, sir.

4 Q. 94. Is that one of the bottles as well?

5 A. Yes, sir.

6 Q. So was 93?

7 A. Yes, sir.

8 Q. And 95. Is that one of the bottles as well?

9 A. Yes, sir.

10 Q. Of the smokeless powder?

11 A. Yes, sir.

12 Q. 97. Do you recognize the items inside of

13 Government's Exhibit No. 97 --

14 A. Yes, sir.

15 Q. -- for identification?

16 What is this?

17 A. A box cutter, a Leatherman or Gerber. I'm not sure
18 which brand that is. And some -- can I see a close look?

19 MR. SOFER: May I approach, Your Honor?

20 THE COURT: Certainly.

21 BY MR. SOFER:

22 Q. There's a blue container with a blue stopper in it;
23 is that right?

24 A. Yes.

25 Q. What's inside of that?

1 A. Some razor blades.

2 Q. Okay. Again substantially in the same condition you
3 saw them on July 27th, 2011?

4 A. Yes, sir.

5 Q. We went out of order because we had to find it. 96.
6 Do you recall what this was?

7 A. Yes. That was a receipt that was found in Room 230.

8 Q. 98 and 99. Do you recognize these objects?

9 A. Yes. I do. That was on one of the tables in Room
10 230 and I opened it to make sure it contained no explosive
11 device.

12 Q. That's -- to your recollection was 98 inside of 99?

13 A. Yes. It was.

14 Q. 100. Do you recognize what I'm holding as Government
15 Exhibit No. 100 for identification?

16 A. Yes. I do.

17 Q. And tell the members of the jury what that is.

18 A. That is a box of shells just like the shells that
19 were found in the backpack that was -- that box was found in
20 230. I opened that. It was closed. I opened it, cut it open
21 and the shells were in that box intact.

22 MR. SOFER: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. SOFER:

25 Q. Were these shells inside here cut open at the time?

1 A. Okay. Those shells were cut open at the time. Those
2 were on the floor near a cup. A clear plastic cup.

3 Q. Okay. I don't know if we can see, but we'll show you
4 some pictures again. But 100, these shells were already open.
5 Is that what you're saying?

6 A. Yes.

7 Q. So they appear now as they did when you saw them on
8 July 27th, 2011?

9 A. Yes.

10 Q. I don't know if you can see from here, but can you
11 see --

12 A. I can see it.

13 Q. -- what's in Government's Exhibit No. 119 for
14 identification?

15 A. Yes, sir.

16 Q. Can you tell us what that is?

17 A. One of the items is the plastic cup that I was just
18 speaking of and that bag has the ball bearings and the other
19 powder or that -- all that was inside of that cup sitting on
20 the floor in the Room 230.

21 Q. It wasn't crushed like this, right?

22 A. No. It was not crushed.

23 Q. 101. Can you tell us what this is?

24 A. Yes. That is a magazine that was found in Room 230
25 on the floor.

1 Q. Okay. Now, again there's what appear to be something
2 else in here, rounds of ammunition inside this plastic. Were
3 they inside this plastic when you found them?

4 A. No. They were not. They were actually inside of the
5 magazine.

6 Q. How about 102? Do you recognize this?

7 A. Yes. I do.

8 Q. Again were the rounds inside of 102 inside the
9 plastic or were they inside the --

10 A. They were inside of the magazine.

11 Q. How about 103? Can you tell us what that is?

12 A. Yes. That's a magazine, also.

13 Q. Do you recall if there were any rounds in this one at
14 all?

15 A. I honestly do not recall if there was rounds in that
16 magazine.

17 Q. Let me show you 104 for identification. Do you
18 recognize this?

19 A. Yes.

20 Q. What is it?

21 A. Gorilla tape.

22 Q. Okay. Is this also substantially in the same
23 condition it was when you saw it?

24 A. Yes, sir.

25 Q. How about 105? Do you recognize this, sir?

1 A. Yes. I do. Those are the batteries that were found
2 on the floor in Room 230.

3 Q. How about 106? Do you recognize this, sir?

4 A. Yes. I do. That's a paint brush that was found in
5 Room 230.

6 Q. How about 107? Do you recognize this?

7 A. Yes, sir. That's electrical tape that was found in
8 Room 230 on the floor.

9 Q. 108?

10 A. Bundle of zip ties that was found in Room 230 on the
11 floor.

12 Q. 109?

13 A. Some jeweler's screwdrivers that were also found in
14 Room 230 on the floor.

15 Q. Okay. Is there also a wrench of some kind here?

16 A. Yes. An allen wrench.

17 Q. 110. Do you recognize this?

18 A. Yes. That was a pressure -- the top to a pressure
19 cooker that was found in Room 230.

20 Q. Okay. 111. Do you recognize this? Can you see
21 what's in there?

22 A. Yes. And those are two spools of wire that was found
23 in Room 230 that was on the floor.

24 Q. 112 and 113. Do you recognize these items?

25 A. Yes. I do. And they both were in Room 230 on the

1 floor.

2 Q. What is it as far as you can tell?

3 A. Granulated sugar and powdered sugar.

4 Q. 114. Do you recognize this?

5 A. Yes. Those were the boxes that was found in Room 230
6 of ammunition that I cut open.

7 Q. Do you recall what kind of ammunition it is?

8 A. I think it's XD .40 pistol ammunition.

9 Q. 40-caliber ammunition?

10 A. Yes.

11 Q. And were these boxes opened at the time that you saw
12 them inside Room 230?

13 A. They were closed and I cut them open.

14 Q. Okay. Why did you cut them open?

15 A. To verify that they were not a device and that they
16 were in fact ammunition.

17 Q. What about 115?

18 A. Yes.

19 Q. Tell us what this is.

20 A. Ammunition that was found on the floor in Room 230.

21 Q. What about 116?

22 A. Yes. And that was found also on the floor in Room
23 230.

24 Q. Can you describe it basically?

25 A. Plastic container. I'm not sure. I can't see from

1 here.

2 MR. SOFER: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY THE WITNESS:

5 A. Yeah. Plastic container for a magazine.

6 BY MR. SOFER:

7 Q. 117. Can you see those?

8 A. No. I cannot.

9 MR. SOFER: May I approach again, Your Honor?

10 BY THE WITNESS:

11 A. Okay. A box of razors that was also found in Room
12 230.

13 BY MR. SOFER:

14 Q. Okay. 118?

15 A. Some shotgun shells.

16 Q. Now, in Government's Exhibit No. 118 for
17 identification similar to what we talked about before, are
18 there -- are there shotgun shells here that have been cut open?

19 A. Yes. Those are cut open.

20 Q. And have you learned that they were cut open by the
21 FBI laboratory?

22 A. Yes. I was told that.

23 Q. And when you saw them did they all look like the two
24 shells that are not cut open?

25 A. That's true. Yes. They did.

1 Q. Otherwise they are in substantially the same
2 condition?

3 A. Yes.

4 Q. Okay. I'm going to show you Government Exhibit No.
5 120 for identification. Do you recognize that from there?

6 A. Yes. I do. And that appears to be the ball bearings
7 and smokeless powder or black powder that was found in the
8 bottom of one of the crock pots or pressure cookers in Room
9 230.

10 Q. Okay. So when you entered the room this was inside
11 of something else?

12 A. Yes. It was.

13 Q. And it looked -- otherwise it looks substantially the
14 same?

15 A. Yes.

16 Q. That's Government's Exhibit No. 120.

17 Now I'm going to show you what's been marked Government's
18 Exhibit No. 121 or the contents of it. Can you tell us -- I'll
19 try to do this quickly. Do you recognize this, sir?

20 A. Yes.

21 Q. Can you tell us what it is?

22 A. That is a U.S. Army ACU pattern cap.

23 Q. Does it have a rank and a name tag on it?

24 A. Yes. It has an E-5 sergeant rank and the name Smith
25 on the back.

1 Q. Okay. How about this, sir? It's Government's
2 Exhibit No. 121 for identification.

3 A. Yes. That's an ACU top.

4 Q. Does it have a name tag on it?

5 A. Yes. It does. The name is Smith. The rank is
6 sergeant and U.S. Army and that's a U.S. cavalry division
7 patch.

8 Q. How about this? What am I holding up?

9 A. The U.S. Army bottoms for the ACU uniform.

10 Q. I have two things here. Can you describe them
11 quickly?

12 A. Yes. The one in your left hand is a belt normally
13 worn with the ACU uniform and that's just a black cloth belt.

14 Q. And finally 121, the box?

15 A. The boots normally worn with the ACU uniform.

16 Q. Okay. Were all these items inside of Room 230?

17 A. Yes. They were.

18 Q. And do they appear substantially in the same
19 condition as when you saw them?

20 A. Yes, sir.

21 Q. Okay. I'm going to show you 122. What am I holding
22 now?

23 A. That appears to be the nurse uniform or medical
24 uniform that I found on the bed in Room 230.

25 Q. Okay. And does it have a little pin on it?

1 A. Yes. It does.

2 Q. Do you recall what it said?

3 A. No. I don't recall what it said.

4 MR. SOFER: May I approach briefly, Your Honor?

5 BY MR. SOFER:

6 Q. Does that help refresh your recollection?

7 A. Yes. Medical assistant.

8 Q. Okay. Was this on that -- on this nursing uniform
9 when you saw it inside of Room 230?

10 A. Yes. It was.

11 Q. Likewise what am I holding here?

12 A. The bottoms to the nursing uniform.

13 Q. Okay.

14 A. A brown T-shirt.

15 And an ID holder.

16 Q. Okay. Sometimes called a lanyard?

17 A. Yes.

18 Q. That was 122.

19 Let me show you what's been marked Government Exhibit No.
20 123 for identification. Do you recognize these items?

21 A. Yes. I do. Those are the identification cards that
22 were found in Room 230 on the dresser to my immediate left.

23 Q. I'm going to show you Government Exhibit No. 124 for
24 identification. Do you recognize this?

25 A. Yes. That is one of the pressure cookers that was

1 found in Room 230.

2 Q. You stated before that one of the pressure cookers
3 had something inside it, correct? It had those pellets and the
4 powder?

5 A. Yes, sir.

6 Q. Is this the one that had them inside it?

7 A. I believe it is, sir.

8 Q. What about Government Exhibit No. 125?

9 A. The lid to that pressure cooker.

10 Q. Okay. Government Exhibit No. 126. Do you recognize
11 this?

12 A. Yes. And that's another pressure cooker that was
13 found in Room 230.

14 Q. All these items inside of Room 230?

15 A. Yes.

16 Q. What about 127?

17 A. Yes.

18 Q. Government Exhibit No. 128. Do you recognize this?

19 A. Yes. And that was another pressure cooker top that
20 was found in Room 230.

21 Q. Government Exhibit No. 129?

22 A. Yes. That's a pressure cooker box that was found in
23 Room 230.

24 Q. Government Exhibit No. 130?

25 A. The pressure cooker instruction manual that was found

1 in Room 230.

2 Q. Government Exhibit No. 131. Do you recognize this?

3 A. Yes. I do.

4 Q. Can you tell us what that is?

5 A. It is a stun gun that was found on the table in Room
6 230.

7 Q. Okay. These batteries, if you recall, were they
8 inside or outside when you saw it?

9 A. Inside.

10 Q. It's been made safe as you said for court, correct?

11 A. Yes, sir.

12 Q. 131 -- 132. Do you recognize these?

13 A. Yes.

14 Q. Can you tell us what this is?

15 A. Binos that were found on the table in Room 230.

16 Q. Binos means binoculars?

17 A. Yes, sir.

18 Q. 133. Do you recognize this?

19 A. Yes. I do.

20 Q. Tell us what that is.

21 A. That is the -- a container that was found in one of
22 the boxes that I opened in Room 230.

23 Q. Do you know what's in here basically?

24 A. I'm not sure if that was the camera box or not.

25 Q. What's inside of this Exhibit 133? Can you see from

1 there?

2 A. No.

3 MR. SOFER: May I approach briefly, Your Honor?

4 BY THE WITNESS:

5 A. Okay. It appears to be a cell phone charger, holder
6 and -- yeah. The wall charger and a car charger.

7 BY MR. SOFER:

8 Q. Government Exhibit No. 134. Do you recognize this?

9 A. Yes. I do. And that's a Christmas light set that
10 was found on the floor of Room 230.

11 Q. Government Exhibit No. 135. Do you recognize this
12 object?

13 A. Yes. I do. And that's a shirt that was found in
14 Room 230 on the floor.

15 Q. Government Exhibit No. 136. Can you recall seeing
16 this in Room 230?

17 A. Yes. I do. And that was a phonebook that was in
18 Room 230 that was opened and that page was torn out of the
19 phonebook.

20 Q. Okay. Government Exhibit No. 137. Do you recognize
21 this?

22 A. Yes. That was on the floor of Room 230, also.

23 Q. Can you see this from here Government Exhibit No.
24 138? Can you see what that is?

25 A. Yes. I can.

1 Q. Tell us what that is.

2 A. That is a container of liquid cement that was found
3 in Room 230 on the floor.

4 Q. Government Exhibit No. 139. Do you recognize this?

5 A. Yes.

6 Q. Tell us what that is.

7 A. Those are cigarette lighters that were also found in
8 Room 230.

9 Q. Government Exhibit No. 140. Do you recognize this?

10 A. No. I do not.

11 MR. SOFER: May I approach, Your Honor?

12 BY THE WITNESS:

13 A. Okay. Yes. I do.

14 BY MR. SOFER:

15 Q. Tell us what that is.

16 A. That was found on the table I believe in Room 230.

17 Q. Government's Exhibit No. 141. Do you recognize this?

18 A. Yes. I do.

19 Q. Tell us what that is.

20 A. That's a head lamp that was found on the floor of
21 Room 230.

22 Q. Government Exhibit No. 143. Do you recognize this?

23 A. Yes. I do.

24 Q. Can you tell us what it is?

25 A. That's one of the bank cards that was found in Room

1 230.

2 Q. Okay. Government Exhibit No. 142. Do you recognize
3 this?

4 A. Yes. I do.

5 Q. Tell us what that is.

6 A. Those contained magnetic keys to Room 230 and 248
7 that were found in Room 230.

8 Q. Show you what's been marked Government Exhibit No.
9 144 for identification. Do you recognize these?

10 A. Yes. I do.

11 Q. Tell us what they are.

12 A. Cardboard boxes and a plastic bag that were found in
13 Room 230 on the floor.

14 Q. Now, in addition to these items, there were other
15 items as well found in the room, correct?

16 A. Yes. There were.

17 Q. At this time -- and all of those items were found
18 that we just went through are in substantially the same
19 condition today other than how you testified as they were when
20 you conducted your EOD search of the room back on July 27th,
21 2011; is that correct?

22 A. That's correct, sir.

23 MR. SOFER: At this time, Your Honor, the government
24 offers Government Exhibit 85 through 144 into evidence.

25 MR. BOYD: Your Honor, with respect to any objections, I

1 don't have any objections to them coming into evidence. I just
2 want it to be clear that there were a couple of items that were
3 cut open by the FBI crime laboratory and those wouldn't
4 necessarily substantially be in the same condition, but I have
5 no objection to them coming into evidence.

6 THE COURT: I think that's been made clear. They'll be
7 admitted.

8 (Exhibit(s) admitted: G85 thru G144)

9 MR. SOFER: And my colleagues, Your Honor, tell me 96 had
10 already been admitted into evidence.

11 BY MR. SOFER:

12 Q. Now, did you get an opportunity to look at -- in
13 addition to the photos we've shown you so far -- I've shown you
14 so far -- another 43 pictures that were taken inside of the
15 room of 230?

16 A. The pictures you're holding?

17 Q. Yes, sir.

18 A. Yes. I did look at those pictures.

19 Q. And do they fairly and accurately represent what the
20 objects looked like in the room?

21 A. Yes. They do.

22 MR. SOFER: At this time the government offers Government
23 Exhibit No. 147-3 all the way through 45 into evidence.
24 They've been previously within shown to Counsel.

25 MR. BOYD: No objection, Your Honor.

1 THE COURT: They're admitted.

2 (Exhibit(s) admitted: G147-3 to G147-45)

3 BY MR. SOFER:

4 Q. I'm just going to go through these photos as quickly
5 as we can here. I'm going to show you Government Exhibit No.
6 147-3. Can you just as we do this explain to the jury what
7 we're seeing and basically describe what you saw when you
8 entered the room.

9 A. Okay. That's --

10 Q. And you may be able to touch on the screen --

11 A. Okay.

12 Q. -- as to certain items.

13 A. Well, I'll start with the pressure cooker. That was
14 found --

15 Q. Talking about --

16 A. -- approximately the same area where it is right now
17 right here. Yes.

18 Q. Okay.

19 A. And that was the pressure cooker that had the ball
20 bearings and the black or smokeless powder in the bottom of it.

21 Q. Okay. How about 147-4?

22 A. Yes. In the previous picture the -- these were laid
23 down. This is how -- well, I found it within the bag. That
24 bag wasn't torn. I tore that bag and lifted and shook each one
25 and made sure it was what it was or appeared to be. It hadn't

1 been modified.

2 Q. Okay. I think this is a close-up of No. 147-5.

3 A. Yes.

4 Q. What about 147-6? Can you see that?

5 A. Yes. And that is one of the pressure cookers that
6 was also found in Room 230 -- that -- in that general area.

7 The smaller of the two.

8 Q. Okay. When you found it, was it together or was it
9 separated like that?

10 A. It was together and I opened it up and took out the
11 different parts of it to ensure that it was not a functioning
12 device.

13 Q. Okay. How about 147-7?

14 A. Yes. That is one of the tables or the table that was
15 in Room 230 and the container for the phone wasn't like that
16 when I originally discovered it. I opened the box that it came
17 in and opened up all the contents to ensure that it wasn't a
18 functioning device.

19 Q. Okay. And do you see other items that you've just
20 described here --

21 A. Yes.

22 Q. -- now in evidence?

23 A. The cement, the sheets and the head lamp and the
24 cords that were in the phone box, also.

25 Q. And how about over here? Can you see what's over

1 there in that picture?

2 A. I can't make that out from here.

3 MR. SOFER: May I briefly approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. SOFER:

6 Q. I don't know if this picture up close is easier to
7 see. Can you tell what --

8 A. Yes. I see it now and that's the stun gun that was
9 found on the table in Room 230.

10 Q. I'm going to show you 147-8 in evidence.

11 A. Yes. That is a picture of the bed from Room 230 and
12 that is after I moved the clothing to make sure they didn't
13 contain anything or a working device and laid them out on the
14 bed.

15 Q. How about 147-9?

16 A. Yes. That is a picture of the drill and the drill
17 bits that were found in Room 230.

18 Q. 10?

19 A. A picture of the clocks that were found in Room 230.

20 Q. Now, this cardboard area around them, did you crush
21 that, or --

22 A. Yes. I crushed that.

23 Q. 12? 147-12?

24 A. That is a receipt that was found in Room 230 along
25 with some peanut snacks that were -- along with some candy that

1 was found in a bag in Room 230 that I emptied the contents of
2 that bag and discovered those items.

3 Q. 13?

4 A. Yes. That is the box cutter and the Gerber or
5 Leatherman that was found in Room 230 that were in the same
6 condition that I found them.

7 Q. Okay. Skip a couple of these. How about 16?

8 A. Yes. Those are the shells that were already on the
9 floor cut open as shown that -- I didn't move those shells at
10 all. I didn't have a reason to move them. They appeared open
11 and they were -- they didn't have the powder or the pellets in
12 it anymore.

13 Q. Okay. 17. Can you see that?

14 A. Barely. And it appears to be the magazines that were
15 found in Room 230 that was on the floor.

16 Q. 18?

17 A. Yes. Those items were found as shown in Room 230
18 except for the two boxes up here in this corner where they were
19 closed. The tops were closed and I cut those open.

20 Q. Okay. I'm going to skip around a little here so we
21 can get moving. 20. Can you tell us what that is?

22 A. Yes. Another picture of some of the boxes that I cut
23 open and some of the shells that were already out on the floor.

24 Q. 24?

25 A. That is a picture of the cup. That cup I did not

1 move and I didn't take that picture either but that cup was
2 actually on the floor in that condition with the BBs and the
3 other item underneath the white.

4 Q. Okay. How about 25?

5 A. That is the inside -- a picture of the inside of one
6 of the pressure cookers as I found it and with the BBs and the
7 black powder and plastic innards of the -- what I believed to
8 come from the 20 gauge shells.

9 Q. 38?

10 A. Yes. Again it's showing the shells that were already
11 cut open, the phonebook that was on the floor and opened and
12 magazines.

13 Q. Okay. 39?

14 A. Yes. This is a picture of that lid and this one kind
15 of puzzled me a little bit because right here is a plastic
16 razor blade and on that plastic razor blade that's sitting on
17 top of that lid there was some melted substance around it and
18 part of the razor blade was melted. But there was no black
19 scoring of it. So I was kind of concerned on what that -- that
20 substance was around it. So I took a sample of it and did a
21 field explosive test on it which consisted of subjecting it to
22 heat shock and friction to see if it would react to any of
23 those and it did not react.

24 Q. Okay. And I just put up 41. Is that a closer
25 picture of what you did?

1 A. Yes. It is.

2 Q. Okay. What did you conclude after the testing you
3 did in looking at this?

4 A. I concluded that it was probable that it was a test
5 burn of some of the powder, the black powder or smokeless
6 powder that was found in the 20 gauge shells due to the -- from
7 the picture it showed how the melting was consistent with a
8 really hot and really fast burn. So that's what I ascertained
9 that it was.

10 Q. That someone had -- what did -- I'm going to show you
11 137.

12 MR. SOFER: If I may approach, Your Honor.

13 BY MR. SOFER:

14 Q. Is that the item you're discussing?

15 A. Yes. It is.

16 Q. Okay. And what again did you conclude happened here?

17 A. A test burn of the black powder or smokeless powder
18 found in the 20 gauge shells was done to determine the burn
19 consistency of it.

20 Q. Okay. Some of the pictures that you looked at had
21 tags with numbers. I assume those were not there when you
22 entered the room; is that correct?

23 A. That's correct. Those were not there.

24 Q. Okay. After you went through Room 230, what did you
25 do?

1 A. Once all the -- once the room to the best of my
2 abilities was cleared of any explosive device, then I directed
3 my team member that he could come in and start recording all of
4 the items that were in the room as myself and the civilian bomb
5 technician moved to the next room to interrogate it.

6 Q. Okay. And some of the pictures we saw were taken by
7 your team member?

8 A. Yes.

9 Q. Did you ultimately conduct a search of another room?

10 A. Yes. I did.

11 Q. What room was that?

12 A. That was Room 248.

13 Q. And again your primary purpose in going through that
14 room?

15 A. Was to ensure that there were -- there were not any
16 explosive devices functioning -- in a functioning capacity in
17 that room and if found, neutralize the said device.

18 Q. I'm going to show you --

19 THE COURT: Hold on. Were there items found in that room?

20 BY MR. SOFER:

21 Q. Were there other items found in the room?

22 A. Explosive device.

23 Q. Were there any items?

24 THE COURT: No. Are there items that you're going to
25 offer into evidence, Counsel?

1 MR. SOFER: Yes, Your Honor.

2 THE COURT: Then we're going to recess for lunch at this
3 point.

4 MR. SOFER: Yes, sir.

5 THE COURT: We'll recess until 1:30, ladies and gentlemen.

6 LAW CLERK: All rise.

7 (Jury exited the courtroom at 12:00.)

8 LAW CLERK: Court will stand in recess until 1:30.

9 (A break was taken from 12:00 to 1:32.)

10 LAW CLERK: All rise.

11 (The jury entered the courtroom at 1:32.)

12 THE COURT: Be seated, everyone.

13 MR. SOFER: May I proceed, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. SOFER:

16 Q. Sergeant Grimes, before we broke you were about to
17 explain that you conducted another search in connection with
18 your response to the incident on July 27th, 2011. Did there
19 come a time when you searched Room 248?

20 A. Yes. There was.

21 Q. And have you previously -- I think I asked you this
22 before lunch, but you employed the same techniques that you've
23 described so far?

24 A. Yes.

25 Q. And was your priority the same when you entered 248?

1 A. Yes. My priority was.

2 Q. And what was that again?

3 A. To diffuse -- to find and diffuse or neutralize any
4 devices found.

5 Q. Okay. Now, prior to coming here to testify today did
6 you see a series of photographs which were marked Government
7 Exhibit No. 84A through J of some of the items that were
8 recovered from inside of that room?

9 A. Yes. I did.

10 Q. Were they fair and accurate representations of at
11 least the items as you saw them on July 27th, 2011 inside of
12 Room 248 in the America's Best Value hotel?

13 A. Yes. They are.

14 MR. SOFER: At this time the government offers 84A through
15 J into evidence previously viewed by Counsel.

16 MR. BOYD: No objection, Your Honor.

17 THE COURT: It'll be admitted.

18 (Exhibit(s) admitted: G84A thru G84J)

19 BY MR. SOFER:

20 Q. Show you 84A in evidence. It's a bad picture of the
21 outside of Room 248, correct?

22 A. Yes. That's the door to Room 248.

23 Q. Show you B. Can you tell the members of the jury
24 what's depicted in Government's Exhibit No. 16B?

25 A. Yes. I can. There's a trash can here that's in that

1 room and --

2 Q. Indicating the upper left-hand corner of the
3 photograph.

4 A. All of the items that you see in that picture were
5 removed from the trash can.

6 Q. Okay. And again why was that done?

7 A. To ensure that the trash can did not contain a
8 working explosive device.

9 Q. I'm going to show you B -- I'm sorry -- C. 84C. Can
10 you tell the jury what that is?

11 A. Yes. That's an item that was found in the Room 248 a
12 package of electrical tape with the electrical tape not being
13 in the package.

14 Q. Okay. And 84D. Tell us what that is depicting.

15 A. That is another picture of items found in Room 248
16 removed from the trash bin.

17 Q. Okay. And E?

18 A. That is a view of one of the walls in Room 248 that
19 contained the dresser with the television on it and some of the
20 items that were found in the trash can were placed on top of
21 that dresser.

22 Q. Okay. So you or somebody else placed those items up
23 there just so they could be photographed?

24 A. Yes.

25 Q. And in that part what F is?

1 A. That's correct. That's what F is, also.

2 Q. Show you 84G. Do you recognize that?

3 A. Yes. That's a -- that is a wadded up piece of paper
4 that's -- with some writing on it. Appears to be a list that
5 was found in the trash can Room 248.

6 Q. So the list was in the trash can. Do you recognize
7 some of the items on Government's Exhibit No. 84G in evidence?

8 A. Yes. I do. I looked at it, directed my team member
9 when he came into the room to take a photo of it also because
10 the items that were listed were consistent with some of the
11 things found in Room 230.

12 Q. Okay. How about 84H?

13 A. Yes. That's a receipt that was found in the trash
14 can of Room 248, also.

15 Q. And were there some items found not in the trash can?

16 A. Yes. There were some tags that appeared to be off of
17 clothing that were found in the rest room as shown.

18 Q. Okay. Finally J. Are those the tags that were
19 found --

20 A. Yes.

21 Q. -- in Room 248 in the bathroom?

22 A. Yes, sir.

23 Q. Okay. We'll go through as quickly as we can the last
24 set of items that you recovered. Show you what's been marked
25 Government's Exhibit No. 76 for identification. I started with

1 this before but do you recognize this?

2 A. Yes. That's the telephone or cell phone box that was
3 found in Room 248.

4 Q. Okay. How about 77?

5 A. Receipt that was found in Room 248.

6 Q. 78?

7 A. Yes. The wadded up piece of paper with the items
8 listed on it that was found in Room 248.

9 Q. Okay. And that's the one you just described that had
10 some of the items that were in Room 230 listed upon it?

11 A. Yes.

12 Q. 79?

13 A. Those are phone cards and items found in Room 248.

14 Q. How about -- I don't know if you can see this but 80?

15 A. Yes. And those are the tags that were found in the
16 rest room in Room 248.

17 Q. It's one tag. Do you know whether this is one in the
18 rest room or whether or not it was in the room? Can you tell
19 from looking at it?

20 A. No. I cannot.

21 Q. But this was in Room 248?

22 A. Yes.

23 Q. How about 81?

24 A. The container of electric tape without the electric
25 tape that was found in Room 248.

1 Q. 82?

2 A. The hat that was found in Room 248.

3 Q. Finally two tags. Can you see those two tags?

4 A. Yes. I can.

5 Q. Do you know what those are?

6 A. Yes. Those were the tags that were found in Room

7 248.

8 Q. Okay. Were these the ones in the bathroom? Do you
9 know?

10 A. I believe they were.

11 Q. Are all those items in substantially the same
12 condition as they were when you saw them inside Room 248 on
13 July 27th, 2011?

14 A. Yes, sir.

15 MR. SOFER: At this time the government offers
16 Government's 83, 82, 81, 80, 79, 78, 77 and 76 into evidence.

17 77's already in.

18 MR. BOYD: No objection, Your Honor.

19 THE COURT: They're admitted.

20 (Exhibit(s) admitted: G76, G78 thru G83)

21 BY MR. SOFER:

22 Q. Were all the items that you've described, that is,
23 the items found in Room 230, the items found in 248 and items
24 found in the backpack eventually taken into custody by the FBI?

25 A. I believe they were.

1 Q. And during the course of your review of what was in
2 Room 230, was there any sign that an individual had begun the
3 process of building a bomb or IED?

4 A. Yes. There were signs. We believed that during the
5 crock pot or the pressure cooker that contained the ball
6 bearings and the smokeless or black powder in the bottom of it
7 were signs that the process had begun to construct an explosive
8 device.

9 Q. And I'm showing you Government's Exhibit No. 147-25
10 which is in evidence. Is that what you're referring to?

11 A. Yes. It is.

12 Q. I want to show you 147-24. Did that indicate
13 anything to you?

14 A. Yes. The same indication that those items were
15 removed from the 20 gauge shell and the process of making an
16 explosive device to use the ball bearings as shrapnel.

17 Q. I want to show you 147-16. Did that indicate
18 anything to you?

19 A. Yes. Those were the shells that were already opened
20 and empty. The powder and shells that indicated that they
21 were -- that's where those previous items had been taken from.

22 Q. Finally Government Exhibit No. 147-41. Did that
23 indicate anything to you? I think you've testified about this
24 already, but I just wanted to make sure.

25 A. Yes. That -- that was what indicated to me that a

1 test burn on the consistency of a burn from the powder from the
2 shells were -- was conducted.

3 Q. Okay. Now, do you have an opinion based on all your
4 training and experience as to whether there were components in
5 that room that would complete a working IED if --

6 MR. BOYD: Your Honor, at this time I'm going to object.
7 This witness has not been offered as an expert.

8 MR. SOFER: Your Honor, we've qualified him and would
9 offer him now if that has not been --

10 THE COURT: He'll be allowed to give his opinion.

11 BY MR. SOFER:

12 Q. Please answer the question.

13 A. Yes. There were numerous items in the room that if
14 placed in concert they would in fact complete a working
15 explosive device.

16 Q. And approximately how long would it take you, do you
17 believe, to do that? I know you can't testify what someone
18 else could do, but how long would it take you to do it?

19 A. It would take me 30 minutes or less to complete a
20 working device.

21 Q. Do you -- were you able to review the article How To
22 Build A Bomb In The Kitchen Of Your Mom?

23 A. Yes.

24 Q. And do you have an opinion based on your training and
25 experience as to whether the instructions that you read in that

1 article are enough if followed to construct a working bomb or
2 IED?

3 A. Yes. In my opinion if followed correctly the
4 instructions was clear and easy enough that you can in fact
5 construct an IED based off those instructions.

6 MR. SOFER: One moment.

7 BY MR. SOFER:

8 Q. Were some of the components that were called for in
9 the article and also would assist one in making a device found
10 also in the backpack?

11 A. Yes. They were.

12 MR. SOFER: Pass the witness, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BOYD:

15 Q. Sergeant First Class Grimes, are you a chemist?

16 A. No. I'm not a chemist.

17 Q. And if you were to classify black powder, how would
18 you classify black powder?

19 A. It is classified or it is known to be classified in
20 the low explosive realm.

21 Q. Okay. How about smokeless powder?

22 A. Same. It is classified in the low explosive realm.

23 Q. So based on your experience they're the same?

24 A. Based on my experience, there's -- no. They're not
25 the same, but they're both low explosives. Smokeless powder

1 was designed or was created because black powder is so dirty.
2 It creates such a dirty burn. So smokeless powder was created
3 to mitigate that residue.

4 Q. Now, with respect to your previous testimony, you
5 testified that before you went into Room 230 that the door was
6 already opened?

7 A. Yes. It was cracked.

8 Q. Who went in before you?

9 A. I'm not sure who went in before me. We were not
10 given keys to the rooms. So like I say I'm not sure if anyone
11 went in or not before me. I just know when I got up the stairs
12 the hotel rooms and the rooms in the hotel were evacuated and
13 the doors were cracked open.

14 Q. Now, with respect to -- let's look at the backpack.
15 You didn't find any device in the backpack, right?

16 A. An explosive device is what you're asking me?

17 Q. That's correct.

18 A. A complete working explosive device was not obtained
19 from the backpack.

20 Q. You didn't even locate any amount of an explosive
21 device in the backpack?

22 A. No. I did not.

23 Q. And, I mean, you found a computer, right?

24 A. Yes.

25 Q. This is part of Government Exhibit 75E. Let me see

1 if I can't make that -- there it goes. This is the contents of
2 the backpack, right?

3 A. Correct.

4 Q. And there's two clocks, right?

5 A. Yes, sir.

6 Q. And those clocks don't have batteries in them, do
7 they?

8 A. I don't recall that there were batteries in the back
9 of those clocks or not.

10 Q. But that would have been something you would have
11 checked for?

12 A. Yes.

13 Q. And you would have -- you would have x-rayed for it
14 at first because you were looking for some sort of a device?

15 A. That's correct.

16 Q. And so the truth is there's no -- there's no
17 batteries in those clocks. You'd remember that?

18 A. Well, you're talking about almost over a year ago and
19 like I said I did not find a fully functioning device in the
20 backpack and that's not something I would like commit to
21 memory.

22 Q. But you didn't even find any device in the backpack?

23 A. No. I found those items that were --

24 Q. You found items in a backpack, right?

25 A. Yes. Yes.

1 Q. You didn't find any device in a backpack?

2 A. Correct.

3 Q. And it would be a misrepresentation to try to refer
4 to these items as a device?

5 A. Correct. But what we refer to them as bomb making
6 material.

7 Q. Now, with respect to your understanding of where this
8 backpack was found, where was it found?

9 A. I was told it was removed from the owner and when I
10 arrived on scene it was underneath the overhang, if that's the
11 correct word for it, that's attached to the front of the hotel
12 and there was a pillar, one of the pillars that holds that
13 overhang up. It was right at the base of one of those pillars.

14 Q. That's not a very good place to leave a suspected
15 device, is it?

16 A. Well, where it ends up is where it ends up. I mean,
17 I was told that they took it off of the owner and it -- that's
18 where it ended up.

19 Q. Right. But you would agree with me that police
20 placing a suspected bag at that location if they thought there
21 was a device in it that's just not a good location to put a bag
22 with a suspected device, is it?

23 A. Well, I'm trying to answer your question. And what I
24 teach law enforcement is once you determine that you have a
25 suspect item, then wherever you place it it's -- immediately

1 set it down and remove yourself and all the other people away
2 from it.

3 Q. And that wasn't done in this case?

4 A. I'm not sure.

5 Q. Well, there --

6 A. I wasn't there.

7 Q. There were people around the bag up until you got
8 there?

9 A. When I arrived they had a cordon, but the cordon was
10 not as far out as I would have liked it and that's why we
11 adjusted the cordon at that time but there wasn't no one within
12 ten feet of the bag.

13 Q. You previously stated that you could have constructed
14 a device from the items in the hotel room. You couldn't have
15 done that with these items, could you?

16 A. Which -- the -- from the bag?

17 Q. From the bag.

18 A. Yes. Well, yes. You're correct that there's not
19 enough items in that -- that was in that backpack to construct
20 a completely working device.

21 Q. Well, to construct any form of a working device. I
22 mean, it just doesn't happen with those items, right?

23 A. Yes. It does.

24 Q. It does?

25 A. Yes. You have a major component which is your -- the

1 clocks which is a safe separation and is the switch with --
2 which is very important in constructing a device. You have
3 nine volt batteries which is a great power source and which is
4 used worldwide for constructing a device. You had wires.

5 Q. That's not my question, sir. My question is, from
6 just these items right here, they're not -- they can't be a
7 device. They just physically cannot be a device. That's true?

8 A. Yes. That is true that those items alone is not a
9 device.

10 Q. And that's my question. There is no way that the
11 items found in the bag could be assembled into any sort of a
12 device?

13 A. That's where you're confusing me and --

14 Q. These items standing alone, that bag was no threat,
15 right?

16 A. Right. At the end, that bag did not contain all of
17 the items needed to construct a working device.

18 Q. Okay. Let me back up and try to bring you back on.
19 Okay? You had an initial concern about the bag, right?

20 A. Yes.

21 Q. You investigated the bag, right?

22 A. Correct.

23 Q. And you end up with the determination that this bag
24 simply is not a device or able to become a device with just
25 standing alone just looking at this bag. That's correct,

1 right?

2 A. That's correct.

3 Q. And this was the bag that you were told was taken off
4 of Mr. Abdo's person?

5 A. That's correct.

6 Q. Now, with respect to the items found in the hotel
7 room, you found nothing fully functioning, correct?

8 A. You mean a completely working device fully assembled?
9 No.

10 Q. You found no initiator?

11 A. According to the manual that was in the backpack on
12 how to construct an IED in the kitchen of your mom, it used or
13 it referenced Christmas lights as the initiation and I've been
14 trained on how to do that myself and so I believed those
15 Christmas lights with that knowledge of what was in the bag was
16 obtained for that purpose to be an initiator.

17 Q. But it wasn't an initiator at the time you found it,
18 right?

19 A. Right.

20 Q. You found an unopened box and you're the one that
21 opened it, right?

22 A. Correct.

23 Q. As a matter of fact, you're the one that opened most
24 every box in that room, right?

25 A. I wouldn't say most. Only the ones that were not

1 completely opened.

2 Q. Well, you opened the drill box, right?

3 A. Yes.

4 Q. So no one had used that drill yet. You opened it.

5 How about the ammunition boxes? You opened those, right?

6 A. Yes, but those were opened previous to me. I just
7 didn't open it the way it would normally be opened.

8 Q. But you also came to a room that the door was
9 previously open?

10 A. Yes. I did.

11 Q. And you don't know who got into that room before you?

12 A. That's correct.

13 Q. Did you take it upon yourself at any point to test
14 those light bulbs yourself?

15 A. No. I did not.

16 Q. Okay. Have you ever built a device according
17 specifically to this recipe that you testified to?

18 A. Yes. I have, and not only have I built them, I've
19 taught other bomb techs how to build them and we've trained
20 against them or with them on numerous occasions.

21 Q. So you've used that article?

22 A. No, sir.

23 Q. Well, sir, I asked you very specifically if you had
24 ever used that recipe book to build a device and you very
25 specifically said yes.

1 A. Well --

2 Q. So is it proper to say that you in fact have never
3 built a device according specifically to the recipe that was
4 contained in that article?

5 A. The devices that I've built were constructed exactly
6 to form the same recipe that was found in that book. Now, I
7 didn't hear you say that book the first time. So --

8 Q. You've never used the recipe in that book?

9 A. That recipe in that book, no. I've never used that
10 book, but the --

11 Q. That's what I'm asking, sir.

12 THE COURT: Let him finish his answer, Counsel.

13 BY THE WITNESS:

14 A. But the things that I've taught and the things that
15 I've done myself in training to build that device were the
16 exact same.

17 BY MR. BOYD:

18 Q. With respect to your previous testimony as to what
19 was located in the pressure cooker, which pressure cooker was
20 it located in?

21 A. The larger of the two.

22 Q. And you called it black powder when you testified
23 previously and in fact there was no black powder in that
24 pressure cooker, was there?

25 A. I testified black powder, smokeless powder because I

1 did not do a chemical analysis of the powder. So I can't
2 ascertain by sight which of the two it was.

3 Q. Well, you're aware that there's a difference between
4 black powder and smokeless powder?

5 A. Yes. I am.

6 Q. And that's a question of being precise, correct?

7 A. But in my -- in my testimony or in my experience
8 there isn't a visible difference in the two that I could
9 determine.

10 Q. Now, with respect to the sugar, sugar's an oxidizer,
11 right?

12 A. Well, mostly used as a fuel.

13 Q. Well, it's an oxidizer. I mean, let's be precise in
14 these terms. It's an oxidizer, right?

15 A. Yes.

16 Q. And the difference in black powder and the difference
17 in smokeless powder is smokeless powder pretty much has the
18 oxidizer built in, right?

19 A. That's correct.

20 MR. SOFER: Your Honor, I'm going to object to this line
21 of questioning. Mr. Boyd started by saying that this witness
22 wasn't a chemist and so as the witness he's not qualified to
23 answer some of these questions.

24 THE COURT: Overruled.

25 BY MR. BOYD:

1 Q. And so the problem is if you add sugar which is an
2 oxidizer to smokeless powder, you create an inert -- something
3 that's inert, right?

4 A. Well, you're talking the -- you can do that.

5 Q. And --

6 A. But you're -- the amount of ingredients would
7 determine whether it goes inert or whether it will actually
8 fuel the burn.

9 Q. And it's important to know the amount?

10 A. Yes. It is.

11 Q. Right? It's very important?

12 A. Yes.

13 Q. And your expertise teaches you that?

14 A. Yes.

15 Q. And that's not expertise that they teach in infantry
16 school, is it?

17 A. Not to my knowledge.

18 Q. In fact, you had to go through very specialized
19 training to get that expertise, didn't you?

20 A. Yes.

21 Q. You didn't find any functioning device in Room 248
22 either, did you?

23 A. No. I did not.

24 Q. You didn't find anything that could become a
25 functioning device in 248 either, did you?

1 A. No. I did not.

2 Q. And it is your testimony that you being an expert
3 trained in assembling these items if you were to follow that
4 recipe precisely, you could create a device in 30 minutes?

5 A. Yes, sir.

6 Q. But you don't take into consideration the sugar, do
7 you?

8 A. What do you mean?

9 Q. If you poured all that sugar on top of everything in
10 accordance with the instructions, you've just neutralized the
11 device you built, right?

12 A. I'm not sure if that instruction called for all the
13 sugar that we found.

14 Q. Okay. In fact it would really take several hours if
15 not a day or better to build such a device?

16 A. Sir, I ran a site at the advanced explosive device
17 school and I built at a minimum 20 devices within a day. I
18 have team members who can build that low degree of difficulty
19 device under 30 minutes.

20 Q. I understand you have team members, sir. But y'all
21 have expertise, right?

22 A. That's correct.

23 Q. One last question. Isn't it true that deflagration
24 is simply a burning of powder?

25 A. If used in the sense that you're speaking of.

1 Q. So when powder burns it deflagrates?

2 A. It --

3 Q. Deflagrates, deflagration?

4 A. Well, it consumes -- when it burns, depending on the
5 type of powder that you're speaking of, it will burn. I mean,
6 there's so many different types of powder or low explosive
7 powders. So, I mean, they all function differently when
8 ignited. So, I mean, they burn at different temperatures.
9 They burn at different rates.

10 Q. But in general when they burn it's called
11 deflagration?

12 A. Well, I can't testify to that term and --

13 Q. Do you not know what it is?

14 A. No.

15 MR. BOYD: Nothing further.

16 MR. SOFER: No questions from the government. May the
17 witness be excused, Your Honor?

18 THE COURT: Yes, sir. You may step down, Sergeant, and
19 you may be excused.

20 MR. SOFER: Government calls Jason Cromartie.

21 (The witness was sworn.)

22 DIRECT EXAMINATION

23 BY MR. SOFER:

24 Q. Good afternoon.

25 A. Good afternoon, sir.

1 Q. Would you please tell the members of the jury how
2 you're employed?

3 A. Special agent with the FBI.

4 Q. And how long have you been with the FBI?

5 A. Approximately seven years.

6 Q. Are you presently assigned to a task force in Austin,
7 Texas?

8 A. Yes, sir.

9 Q. Can you tell us on July 27th, 2011 were you asked to
10 respond to an incident in Killeen, Texas?

11 A. Yes, sir.

12 Q. And that's here in the Western District of Texas in
13 the United States in the Waco Division; is that correct?

14 A. Yes, sir.

15 Q. Did there come a time when you observed numerous
16 items being taken into the FBI's custody?

17 A. Yes, sir.

18 Q. And did you later learn that those items were
19 recovered in Room 248, 230 and a backpack outside the hotel?

20 A. Yes, sir.

21 Q. Have you participated in parts of the investigation
22 of this case?

23 A. Yes, sir.

24 Q. And in doing so do you know if some of those items
25 were sent to the FBI lab in Quantico, Virginia for further

1 analysis?

2 A. Yes, sir. That's correct.

3 Q. In connection with your investigation of this case,
4 have you had occasion to see Government's Exhibit No. 14 for
5 identification?

6 A. Yes, sir.

7 Q. Can you tell us what that is?

8 A. Those are face masks, sir.

9 Q. Do you recall when you first saw these?

10 A. Yes, sir. During a review of the evidence that we
11 had in custody at the Austin office we were going through a set
12 of evidence and located those items in the middle mixed with
13 some other evidence.

14 Q. Do you recall what other evidence it was mixed with?

15 A. Yes. It was with a body bag.

16 Q. And prior to discovering it inside that other
17 evidence, as far as you know, was the FBI or anyone else aware
18 of its existence?

19 A. No, sir.

20 Q. And is Government's Exhibit 14 for identification in
21 the same or similar condition as it was when you first located
22 it?

23 A. Yes, sir.

24 Q. Do you know approximately when that was?

25 A. It was in October, sir.

1 Q. Okay.

2 A. October 2011.

3 Q. And was that at the Austin office of the FBI?

4 A. Yes, sir.

5 MR. SOFER: At this time the government moves Government
6 14 for identification into evidence, Your Honor.

7 MR. BOYD: No objection, Your Honor.

8 THE COURT: Admitted.

9 (Exhibit(s) admitted: G14)

10 MR. SOFER: Just one moment, Judge.

11 BY MR. SOFER:

12 Q. I'm going to show you what's marked 75G in evidence.
13 Have you had occasion during the course of your involvement in
14 this investigation to see this document?

15 A. Yes, sir.

16 Q. And do you know where it came from?

17 A. Yes, sir. From the backpack that was at the scene
18 from the subject.

19 Q. Are you familiar with the names that are listed
20 there?

21 A. Yes, sir.

22 Q. And as part of your training in the FBI is it
23 important for you to be familiar with current events as it
24 relates to your work in national security?

25 A. Yes, sir. It is.

1 Q. Can you please tell the jury to the extent that you
2 know who these individuals are basically?

3 A. The first name Abeer Qassin Hamza Al-Jonabi refers to
4 an Iraqi female that was assaulted and killed in Iraq.

5 The second name refers to Major Nidal Hasan, an individual
6 who's alleged to have committed an assault at Fort Hood killing
7 13 individuals.

8 Abdul Hakim refers to Abdul Hakim Mujahid Muhammad an
9 individual who perpetrated an attack against a Little Rock
10 Arkansas Army recruiting center killing one individual and
11 shooting another.

12 Faisal Shahzad refers to a naturalized U.S. citizen that
13 participated and put together a failed bombing attack in Time
14 Square in New York.

15 Osama Bin Laden is the widely recognized leader of
16 Al-Qaeda.

17 Al Ashi in what appears to be family in Dallas and there's
18 "Holy Land" behind that appears to refer to Gusan Al Ashi and
19 the Al Ashi family members who were involved with the Holy Land
20 foundation. They were convicted for material support to Hamas.

21 And the final name at the bottom Hasan Akbar refers to
22 Army Sergeant Hasan Akbar who attacked soldiers while deployed
23 overseas killing a couple in a grenade attack.

24 Q. Now, have you as part of your work become familiar
25 with the article how to -- well, have you become familiar with

1 Inspire magazine?

2 A. Yes, sir.

3 Q. And can you tell us very basically what you know of
4 that magazine the publication?

5 A. It's an online magazine published by a group called
6 Al-Qaeda in the Arabian Peninsula. It's meant for an English
7 speaking audience as a way to further carry out Al-Qaeda's
8 message, how to support them, how to carry out actions on their
9 behalf, how to communicate with them, etcetera.

10 Q. And as part of your familiarity with the article have
11 you also learned about -- I'm sorry -- with the magazine have
12 you also learned about an article entitled How To Build A Bomb
13 In The Kitchen Of Your Mom?

14 A. Yes. That is an article that appeared in one of the
15 issues of Inspire magazine published by Al-Qaeda in the Arabian
16 Peninsula.

17 Q. And have you reviewed that article?

18 A. Yes. I have, sir.

19 Q. When you did so in connection with your duties in
20 this case, did you also review some of the evidence that was
21 recovered at the scene of the America's Best Value hotel in
22 Killeen, Texas on July 27th, 2011?

23 A. Yes, sir. I did.

24 Q. And have you determined whether there are items --
25 item or items that correspond between the article itself and

1 what was recovered at the scene?

2 A. Yes, sir. There were.

3 MR. SOFER: If we could pull up Government Exhibit No. 67
4 in evidence.

5 Can you just zoom in on the title -- the title at the very
6 top of that page?

7 BY MR. SOFER:

8 Q. It says Open Source Jihad. Can you tell the members
9 of the jury if you know from your experience what the word
10 "Jihad" means?

11 A. Yes, sir. My training and experience is --

12 Q. Hold on one second.

13 THE COURT: I think the previous witness may have left
14 something there on the witness stand.

15 MR. SOFER: Thank you, Judge.

16 BY MR. SOFER:

17 Q. The word "Jihad," the last word of that article can
18 you explain basically and in summary what that word means as
19 far as your training and experience?

20 A. Yes. In common usage it is often used to refer to
21 holy war.

22 Q. And have you learned in your training and experience
23 what the word "Mujahidin" means or "Mujahid"?

24 A. Yes. In common usage it is often referred to someone
25 who is a holy warrior or someone who's a fighter in a

1 particular cause.

2 Q. And finally have you learned in your experience what
3 the word "Inshallah" means?

4 A. Inshallah refers to an expression meaning God
5 willing.

6 MR. SOFER: If we could go to the first page of the
7 article How To Build A Bomb In The Kitchen Of Your Mom at the
8 top. And if you could please magnify the first paragraph.

9 BY MR. SOFER:

10 Q. And again this is Government's Exhibit No. 67 already
11 in evidence. Can you read for the jury what that first
12 paragraph states?

13 A. Yes, sir.

14 Can I make an effective bomb that causes damage to the
15 enemy from ingredients available in any kitchen in the world?
16 The answer is yes. But before how, we ask why. It is because
17 Allah says: So fight in the cause of Allah. You are not held
18 responsible except for yourself. And inspire the believers to
19 join you that perhaps Allah will restrain the military might of
20 those who disbelieve. And Allah is greater in might and
21 stronger in exemplary punishment.

22 MR. SOFER: Now I want to go down one, two, three to the
23 fifth paragraph. Starts with the words, "There are many
24 Muslims." Could you please magnify that?

25 BY MR. SOFER:

1 Q. Can you see that, Agent Cromartie?

2 A. Yes, sir.

3 Q. And can you read that portion to the jury, please?

4 A. Yes, sir.

5 There are many Muslims who have the zeal to defend the
6 ummah but their vision is unclear. They believe that in order
7 to defend the ummah they need to travel and join the mujahidin
8 elsewhere and they must train in their camps. But we tell the
9 Muslims in America and Europe there is a better choice and an
10 easier one to give support to your ummah. That is individual
11 work inside the west such as the operations of Nidal Hasan and
12 Faisal Shahzad. With a few failed operations, as they claim,
13 the director of National Intelligence was forced to resign.
14 With a few more failed operations we may have the resignation
15 of the president of the United States.

16 Q. Okay. And some words that are in there, if you're
17 familiar with them, do you know what the ummah is?

18 A. Yes. It is a term referring to the community, the
19 Muslim community specifically.

20 Q. And how about mujahidin?

21 A. Plural of mujahid. So holy warriors or fighters.

22 Q. And the names Nidal Hasan and Faisal Shahzad. Were
23 those found in the document that you just looked at as well?

24 A. Yes, sir.

25 MR. SOFER: Okay. If we could just magnify the very

1 bottom of that page, please.

2 I'm sorry. One paragraph up all the way to the bottom.

3 Starts with "My Muslim brother."

4 BY MR. SOFER:

5 Q. Would you please read that to the members of the
6 jury?

7 A. Yes, sir.

8 My Muslim brother, who wants to support the religion of
9 Allah, do not make too many calculations and forecasting of the
10 results and consequences. It is true that Umar al-Faruq and
11 his brothers Nidal Hasan and Shahzad were imprisoned but they
12 have become heroes and icons that are examples to be followed.
13 We ask Allah to grant them steadfastness. If they were sincere
14 and steadfast, their imprisonment would be an increased status
15 for them. The hadith says if Allah loves a people, he would
16 put them through trials. The result of these trials would be
17 the highest levels of Paradise, the pleasure of Allah, heaven
18 in the hearts of this world and eternal pleasure in the
19 afterlife. My Muslim brother: We are conveying to you our
20 military training right into your kitchen to relieve you of the
21 difficulty of traveling to us. If you are sincere in your
22 intentions to serve the religion of Allah, then all what you
23 have to do is enter your kitchen and make an explosive device
24 that would damage the enemy if you put your trust in Allah and
25 then use this explosive device properly. Here are the main

1 qualities of this bomb: Its ingredients are readily available.
2 Buying these ingredients does not raise suspicion. It is
3 easily disposed of if the enemy searches your home. Sniffing
4 dogs are not trained to recognize them as bomb making
5 ingredients. In one or two days the bomb could be ready to
6 kill at least ten people. In a month you may have a bigger and
7 more lethal bomb that could kill tens of people.

8 Q. Now, again going through the rest of the article --
9 I'll do so fairly quickly -- were there a number of places
10 where you found connections between what it is that was
11 recovered in this case in terms of evidence and what the
12 article itself lays out?

13 A. Yes, sir.

14 MR. SOFER: And we're not going into every single one of
15 them, but if we could put up on Page 34 of the article Items 1
16 and 2. Well, let's do just 1, please. That's fine.

17 BY MR. SOFER:

18 Q. Can you read 1?

19 A. Inflammable substance.

20 MR. SOFER: Okay. And put up a picture of Government's
21 Exhibit No. 90 through 95.

22 BY MR. SOFER:

23 Q. Is this one of the connections that you found?

24 A. Yes, sir. It was.

25 Q. Did you find other connections?

1 A. Yes. We did, sir.

2 Q. What's another connection you found if it's already
3 highlighted?

4 A. Should be the decorations lamp.

5 Q. Okay. And was there a decoration lamp as far as you
6 know?

7 A. Yes.

8 Q. Is this the one that says what is normally used for
9 Christmas trees?

10 A. Yes, sir.

11 MR. SOFER: Can we put up a picture of Government Exhibit
12 134, please?

13 Would you put up on Page 35 the bottom of the page,
14 please? If you can highlight it.

15 BY MR. SOFER:

16 Q. Something on there which was found as well?

17 A. Yes. We found -- we located a drill, sir.

18 Q. Okay. And is that --

19 MR. SOFER: Can we put up picture 85, please? Can we turn
20 to Page 37? And the bottom of that page as well.

21 MY MR. SOFER:

22 Q. Do you see anything in there that was located as
23 well?

24 A. Yes, sir. We recovered a battery. Nine volt.

25 MR. SOFER: And can you go up to the diagram on that page,

1 please, and highlight those either one? One or two.

2 BY MR. SOFER:

3 Q. Anything else that was recovered that's in that
4 diagram?

5 A. Yes, sir. Electrical wiring.

6 MR. SOFER: Okay. Can we put up pictures 59 and 111,
7 please? I say pictures. These are items in evidence 59 --
8 Government's 59 and Government's 111. Let's turn to Page 38 of
9 the article, please, and could you just highlight the top?

10 BY MR. SOFER:

11 Q. Were there items on this page that were found?

12 A. Yes.

13 Q. Or consistent with what's written on this page?

14 A. Yes, sir. The clocks.

15 MR. SOFER: Okay. Can we show Government's 57?

16 Let's go to Page 40. And the top third of the page. Can
17 you just get the top three paragraphs?

18 BY MR. SOFER:

19 Q. Can you read that? If you can read it?

20 A. Yes, sir.

21 Q. Can you read the first full paragraph that's
22 highlighted there for the jury? Starts with the word
23 "however."

24 A. However, in order to fill for example a pressurized
25 cooker with the substance from matches, it may take a lot of

1 matches to do so and therefore you may want to use gun powder
2 or the powder from fireworks.

3 Q. And do you see something else on that page which was
4 recovered in this case --

5 A. Yes, sir.

6 Q. -- concerning your investigation?

7 A. Yes, sir. We recovered pressure cookers.

8 Q. Okay. We'll come to that in a second.

9 Anything else listed on that page?

10 A. The gun powder and below that it mentions you also
11 need to -- or I'm sorry. You also -- you need to also include
12 shrapnel. The best shrapnel are spherical shaped ones. As you
13 can see in the figure below, you'll need to glue them to the
14 surface of the canister. If steel pellets are not available,
15 you may use nails instead.

16 We recovered opened up shell casings and also a cup that
17 contained metal spherical objects appeared to be gunshot.

18 MR. SOFER: Okay. And can we put Government's Exhibit No.
19 120 up?

20 BY MR. SOFER:

21 Q. It mentions glue in there as well. Did you recover
22 any glue in the case as far as you know?

23 A. Yes. We did.

24 MR. SOFER: Can you put up Government's Exhibit No. 138,
25 please?

1 BY MR. SOFER:

2 Q. Okay. Is that what you were referring to?

3 A. Yes, sir.

4 Q. Let's go to the middle of the page. It says, with
5 that said, can you read that for the members of the jury as
6 well?

7 A. With that said, here are some important steps to take
8 for an effective explosive device. Place the device in a
9 crowded area. Camouflage the device with something that would
10 not hinder the shrapnel such as cardboard.

11 Q. Was there anything recovered in this case consistent
12 with that?

13 A. Yes, sir. We recovered cardboard boxes.

14 MR. SOFER: Can you put up Government Exhibit No. 144,
15 please? A little farther down on that page, same page.

16 BY MR. SOFER:

17 Q. Do you see anything there? Well, can you read that
18 just that one paragraph around the picture?

19 A. Yes, sir.

20 The pressurized cooker is the most effective method. Glue
21 the shrapnel to the inside of the pressurized cooker and then
22 fill the cooker with the inflammable material. Insert the
23 prepared lamp into the inflammable material gently in order not
24 to break the filament of the lamp. Then have the wires
25 sticking out of the hole in the lid of the cooker. Wrap some

1 tape around the hole to seal the electric source in the same
2 way as we did with the iron pipe.

3 Q. Okay. And you said a pressure cooker was recovered?

4 A. Yes, sir.

5 Q. Pressure cookers?

6 A. Yes.

7 MR. SOFER: Can you put up Government's Exhibit No. 125,
8 please?

9 Now, if we can pull up Government Exhibit No. 62, please.
10 And can you magnify just that area?

11 BY MR. SOFER:

12 Q. Were you aware during the course of your
13 investigation of this piece of paper?

14 A. Yes, sir.

15 Q. And can you tell us if you know whether or not this
16 particular piece of evidence corresponds to the article How To
17 Build A Bomb In The Kitchen Of Your Mom?

18 A. Yes. The article lays out in detail the materials
19 needed to construct the improvised explosive device including
20 mentioning the items that are listed here on the list. The
21 red, black, green wire, nine volt battery, Christmas lights,
22 pressure cooker, power drill, gun powder, Gorilla tape, epoxy
23 glue, shotgun shells, cardboard box, glue, honey comb lenses
24 for binos. We recovered items that corresponded to this list.

25 MR. SOFER: Okay. You can take that down.

1 BY THE WITNESS:

2 A. And these are the items that were mentioned as needed
3 for the construction of the device in the article.

4 BY MR. SOFER:

5 Q. Have you previously been assigned responsibilities at
6 the FBI for what's called weapons of mass destruction?

7 A. Yes, sir.

8 Q. Can you tell the jury basically what that means?

9 A. Refers to any device whether it be chemical,
10 biological, explosive that causes mass indiscriminate injuries.

11 Q. Are you familiar with the FBI's response to such
12 incidents as a whole?

13 A. Yes, sir.

14 Q. Can you describe for the members of the jury what the
15 FBI's response would have been had there been a successful
16 detonation of an IED in a restaurant in Killeen in which
17 soldiers were killed in the explosion and/or shot and killed by
18 a gunman waiting outside after an explosion?

19 MR. BOYD: Your Honor, I'm going to object as to this
20 calls for speculation as to something that just never happened.
21 There's no probative value.

22 MR. SOFER: And, Your Honor, the government has to prove
23 an effect on interstate commerce here. The specifics of that
24 proof state whether or not had it been successful it would have
25 had an effect on interstate commerce and that's our purpose

1 here, Your Honor. It's an element of the crime charged.

2 THE COURT: Overrule the objection.

3 BY MR. SOFER:

4 Q. You can answer the question.

5 A. It would have necessitated a response from several
6 units at FBI headquarters as well as several other units
7 located around the country. FBI laboratory division personnel
8 out of Virginia, headquarters personnel out of DC, rapid
9 response personnel from other places, probably regional ERT
10 response units from different parts of this state and other
11 states.

12 Q. You said ERT. What is that?

13 A. I'm sorry. Evidence response team.

14 Q. Okay. So people would be -- lots of people would be
15 traveling to Killeen, Texas to assist in such an event?

16 A. Yes.

17 Q. And you're familiar with that from your experience in
18 the weapons of mass destruction program in the FBI?

19 A. Yes.

20 Q. In addition to that would there be multiple
21 communications from the State of Texas to Washington, DC,
22 Virginia and elsewhere in the United States by phone and the
23 internet?

24 A. Yes, sir. There would have been.

25 MR. SOFER: Pass the witness, Your Honor.

1 THE COURT: Members of the jury, let me instruct you right
2 quick. The series of questions and answers you just heard you
3 should consider only as far as it affects the element of the
4 action involving interstate commerce and not for any other
5 reason. That's the only reason that was allowed.

6 Counsel?

7 CROSS-EXAMINATION

8 BY MR. BOYD:

9 Q. I draw your attention to what has previously been
10 marked as Government's Exhibit No. 67. Would you please read
11 the bullet comment that states "in one or" and read that for
12 me?

13 A. In one or two days the bomb could be ready to kill at
14 least ten people. In a month you may make a bigger and more
15 lethal bomb that could kill tens of people.

16 Q. Now, let's talk about this for a second. The way
17 that the article is written is more driven towards a pipe bomb,
18 right?

19 A. I would answer that question by saying that the
20 article starts off describing a pipe bomb and then goes on to
21 explain how to make a more lethal device.

22 Q. And my next question was going to be then it
23 progresses and it suggests a pressure cooker, correct?

24 A. Yes. It goes from a simple IED construction device
25 to multiple devices to a pressure cooker.

1 Q. And so the simple one in looking at this article
2 would take one to two days to build?

3 A. That's based upon the author's estimation.

4 Q. And a more complicated one could take up to a month.

5 A. Again that depends on the author's estimation of
6 whoever's constructing the device.

7 Q. Now, with respect to the other language contained
8 within the same article, no pipes were recovered, right?

9 A. No.

10 Q. This device also calls for the use of a nail
11 according to this article, correct?

12 A. It calls for the use of shrapnel.

13 Q. Well --

14 A. And nails was one type of shrapnel that was offered.

15 MR. BOYD: Bring up Page 37.

16 BY MR. BOYD:

17 Q. Now, this indicates that you would connect one wire
18 to a nail?

19 A. Yes. At this point. Yes.

20 Q. Right?

21 A. Yes, sir.

22 Q. So that's a -- that's something that you just didn't
23 recover was a nail?

24 A. Yes, sir. As I recall. Correct.

25 Q. Well, I mean, it's just not there. It's not that

1 you -- there was no nail recovered by the FBI; that's right?

2 A. Not a single nail. Yes, sir.

3 Q. There was no nails at all recovered by the FBI?

4 A. Yes, sir.

5 Q. That's correct?

6 A. Yes. That is correct.

7 MR. BOYD: Okay. Bring up Page 40, please.

8 BY MR. BOYD:

9 Q. This is in regards to the pressure cooker.

10 Specifically it states to fill the cooker with the inflammable
11 material, right?

12 A. Yes, sir.

13 Q. Now, there's simply not enough material to fill that
14 pressure cooker, is there?

15 A. Probably not, sir. If you're talking about filling
16 it to the brim, I would assume --

17 Q. I'm talking about filling it in accordance with this
18 recipe there is not enough material to put in this pressure
19 cooker to fill it up.

20 A. With six -- with those six -- if you're talking about
21 the six containers of gun powder, you're correct, sir.

22 Q. That's correct. And these just -- they don't do it?

23 A. Correct, sir.

24 Q. Even with the packaging there's a lot of space left
25 over, isn't there?

1 A. Yes, sir.

2 MR. BOYD: I have no further questions.

3 MR. SOFER: No further questions from the government, Your
4 Honor. May the witness be excused?

5 THE COURT: He may.

6 MR. SCHNEIDER: The government calls Erich Smith.

7 (The witness was sworn.)

8 DIRECT EXAMINATION

9 BY MR. SCHNEIDER:

10 Q. Good afternoon, Mr. Smith.

11 A. Good afternoon.

12 Q. Would you please introduce yourself to the jury?

13 A. My name is Erich Smith.

14 Q. And what is it you do for a living?

15 A. I'm a physical scientist with the FBI laboratory.

16 Q. And how long have you been employed by the FBI?

17 A. I've worked for the FBI since May 1998.

18 Q. And while you've been employed by the FBI, in what
19 positions have you worked?

20 A. Initially when I started working with the FBI I was a
21 physical science technician and then I moved into the role of a
22 physical scientist specializing in firearms and tool mark
23 identification.

24 Q. How long were you a technician?

25 A. I was a technician for four years.

1 Q. And in that capacity as a technician what did you do
2 at the FBI lab?

3 A. Primarily I worked and assisted a qualified firearms
4 examiner documenting information about evidence.

5 Q. And you said that you then became an examiner?

6 A. That's correct.

7 Q. And what kind of training did you receive to become a
8 qualified examiner?

9 A. To become a qualified firearms and tool marks
10 examiner you have to think of it as an apprenticeship.
11 Initially when you start off you're assigned a training manual
12 that outlines all the key elements to become the firearms and
13 tool marks examiner. But now you're going to work in concert
14 with a trained examiner for about two years and you're going to
15 look at thousands of known matches and known non matches. And
16 when I speak of those I'm talking about bullets and cartridge
17 cases that have been fired.

18 It also has an element of gunshot residue. We look at the
19 residues that are produced from the discharge of a firearm. We
20 also look at tool marks. We also are afforded the opportunity
21 to go to manufacturing facilities for firearms as well as tool
22 marks and this all culminates in the end in three oral boards
23 where my peers come together and they basically ask you
24 questions to test your knowledge. If you successfully complete
25 that, then you have to do three moot courts. You're given

1 three practicals. It's set up in a trial setting just like
2 this and you have to present your case. If you successfully
3 complete those six texts, you're qualified as a firearms and
4 tool marks examiner.

5 Q. Now, you've mentioned a few times the word "tool
6 marks." Can you explain to us what tool marks means?

7 A. Sure. You have to think of a tool as just the harder
8 object. So a firearm is certainly a tool. It's an object
9 that's designed to push a bullet or a cartridge case. So a
10 tool, be it a pair of pliers or a hammer, is the harder object
11 that would impart a tool mark. So we would compare tool marks
12 that were produced by a tool. It's the same thing we do with
13 firearms as well.

14 Q. Now, when were you qualified as an examiner for the
15 FBI?

16 A. I passed my qualifications in February of 2002.

17 Q. So for the last ten years have you been working in
18 the same position as a qualified examiner at the FBI lab?

19 A. Yes. I have.

20 Q. And where is the FBI lab located?

21 A. It's located in Quantico, Virginia.

22 Q. And can you tell us what, if anything, you did before
23 joining the FBI?

24 A. Yes. Prior to that I was actually working in the
25 Virginia Division of Forensic Science in their firearms and

1 tool marks unit.

2 Q. And what is your educational background?

3 A. I have a bachelor of science degree in biology from
4 Virginia Commonwealth University. I also have a masters in
5 forensic science from Virginia Commonwealth University.

6 Q. Now, while you've been employed at the FBI either as
7 a physical scientist technician or a physical scientist and
8 qualified examiner, approximately how many firearms have you
9 tested? How many tests have you conducted?

10 A. I can't give you an exact number, but to put it in
11 perspective, since being qualified as examiner I've done over
12 900 cases. So a case could consist of one or many guns. So
13 it's easy to say I've worked over 1,000 guns since being
14 qualified as a firearms examiner.

15 Q. Have you previously testified in court in those other
16 cases as to the operability of firearms or the operability of
17 ammunition?

18 A. Yes. I have.

19 Q. Approximately how many times?

20 A. I've testified approximately 28 times.

21 Q. And have you been qualified as an expert in those
22 other cases?

23 A. I've been qualified as an expert both in state and
24 federal court.

25 Q. And based on your training and expertise are you able

1 to determine the operability of firearms and ammunition?

2 A. Yes. I am.

3 MR. SCHNEIDER: Your Honor, the government offers Erich
4 Smith as an expert in the field of the operability and testing
5 of firearms.

6 MR. BOYD: No objection, Your Honor.

7 THE COURT: He'll be allowed to state his opinion.

8 BY MR. SCHNEIDER:

9 Q. Now, related to this case and the defendant Naser
10 Abdo did you ever receive any items to be tested at the lab?

11 A. Yes. I did.

12 Q. Do you remember what items you received at the lab to
13 be tested?

14 A. I received some ammunition as well as a firearm and a
15 stun gun to look at.

16 Q. And starting with the stun gun, does that fall under
17 firearms?

18 A. That's atypical for my type of examination. I
19 basically looked at the stun gun and made notations about what
20 the item was.

21 Q. And did you determine if it was operable or not?

22 A. Actually the stun gun had a switch and basically all
23 I did is I turned the switch on and it showed an illuminated
24 light indicating that it was powered up.

25 Q. I'm going to show you Exhibit 131 that's already in

1 evidence and ask you --

2 MR. SCHNEIDER: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 BY MR. SCHNEIDER:

5 Q. Ask you to take a look at that. And is that the stun
6 gun that you received in the lab and examined?

7 A. Yes. It is.

8 Q. And how can you tell it's the same one that you
9 examined?

10 A. Actually you can actually see on the outside of this
11 container it has my laboratory number which appears right here.
12 These are actually my initials and then on the stun gun
13 container or holder you can see the laboratory number again
14 that's been marked on there as well as the question item
15 number.

16 Q. And other than -- is that stun gun, that exhibit, is
17 that in the same condition as when you received it?

18 A. No. It's not. Actually the batteries have been
19 removed. When I received it the batteries were inside the stun
20 gun.

21 Q. Okay. I'm now going to ask you to take a look at
22 Government 73 which is already in evidence. And what is that?

23 A. Again you can see on the outside of this box this is
24 the laboratory number and then this is the Q identifier for
25 this pistol that I received which is Q9. This may be difficult

1 to see, but I actually scribed underneath the trigger guard it
2 appears in the silver marked area the laboratory number and the
3 Q9 identifier and my initials.

4 Q. And you recognize your initials on that gun?

5 A. Yes, sir. I do.

6 Q. And does that serial number match the serial number
7 for the gun that you received?

8 A. Can I take it out of the box?

9 Q. Yes. We can't remove it from the box.

10 A. All right.

11 Q. But if you can read the -- the serial number should
12 be on the front part of the item without removing it from the
13 box.

14 A. It is the same serial number.

15 Q. And can you tell us what that serial number is?

16 A. It's US255990.

17 Q. Okay. Now, you said you also received some
18 magazines?

19 A. Yes. I did.

20 Q. That came with that firearm?

21 A. I did receive some magazines.

22 Q. And how many magazines did you receive at the lab?

23 A. I received four magazines.

24 Q. I'm going to show you Government's Exhibit No. 101
25 and ask you to take a look at that. Do you recognize that?

1 A. Yes. I do.

2 Q. And is that one of the magazines that you examined?

3 A. It is. It actually has my initials on it as well.

4 Q. And is there anything else in that exhibit?

5 A. Yes. As I explained earlier, this one has the
6 laboratory number on the bag as well and this one is Q27, and
7 Q27 represents the magazine, but also within the magazine when
8 I received it were cartridges and they'd been labeled Q27.1 to
9 Q27.4. So when I received this magazine there were four
10 cartridges in the magazine.

11 Q. And did you then remove those rounds of ammunition or
12 the cartridges?

13 A. Yes. I had to take the cartridges out to do the
14 examination on the cartridges themselves.

15 Q. And can you tell if those are the same cartridges or
16 rounds of ammunition that you received?

17 A. Can I take them out?

18 Q. Yeah. You can open that. Or if you can tell from
19 the outside of the bag, that might be easier if there's a way.

20 A. Actually on the side of the cartridge cases you can
21 see my initials just like on the bag. So on these cartridges I
22 placed my initials on the outside of them.

23 Q. And did you do that for every cartridge that you
24 received?

25 A. For every cartridge I did put my initials on the

1 outside.

2 Q. Now, what kind of cartridges are those?

3 A. These were .40 -- well, the caliber we're talking
4 about is --

5 Q. Yeah. The caliber.

6 A. -- .40 S&W. The S&W stands for Smith and Wesson.

7 Q. And what type of magazine is it?

8 A. This magazine -- can I refer to my notes?

9 Q. Yes. You may.

10 A. All right. The Q27 magazine is actually a
11 Springfield Armory brand magazine. That's the brand name.

12 Q. I've now shown you what's been marked as Government's
13 102 which is already in evidence. And is that one of the
14 magazines that you received?

15 A. Yes. It is. You can actually see my initials on
16 this magazine right here.

17 Q. And is anything else included in that exhibit with
18 the magazine?

19 A. Yes. It's actually sandwiched between these two
20 pieces of styrofoam are the cartridges that were removed from
21 this magazine when I received it.

22 Q. So did the styrofoam come to the lab when you
23 examined that?

24 A. No. It was returned this way.

25 Q. And can you tell if your initials are on those

1 cartridges?

2 A. Yes. They are.

3 Q. How many cartridges?

4 A. There are ten cartridges in this container.

5 Q. And what's the caliber?

6 A. This is -- again is a .40 Smith & Wesson caliber.

7 Q. And looking at the magazine what type of magazine is
8 it?

9 A. Again this is another Springfield Armory magazine.

10 Q. Is that for a 40-caliber handgun?

11 A. Yes. It is.

12 Q. Now, you have Government's Exhibit No. 103 already in
13 evidence. Is that something that you analyzed at the lab?

14 A. Yes. It is.

15 Q. What is that?

16 A. This again is another magazine and it's sealed. It
17 has my laboratory number on it and it was the Q28 identifier
18 and it is scribed with the laboratory number and my initials.

19 Q. What kind of magazine is it?

20 A. This is again is another Springfield magazine.

21 Q. Is that for a 40-caliber handgun?

22 A. That's correct.

23 Q. Is there any ammunition or cartridges in that
24 exhibit?

25 A. This one did not have any cartridges in it when I

1 received it.

2 Q. Now, you're looking at Government's Exhibit 70 which
3 is already in evidence. Do you recognize that?

4 A. Yes. I do.

5 Q. And did you analyze that magazine in the lab?

6 A. Yes. I did. It has my laboratory number scribed on
7 it and the identifier Q8.1.

8 Q. And is there anything else included in that exhibit?

9 A. Yes. Again you can see there's styrofoam. You can
10 actually see the heads of the bullets for the cartridges and
11 these cartridges were actually removed from this magazine.

12 Q. How many cartridges?

13 A. There are seven cartridges in here.

14 Q. And have those been initialed by you so that you can
15 tell that you've previously examined them?

16 A. Yes. They have.

17 Q. And what is the caliber on the cartridges in that
18 exhibit?

19 A. These are .40 Smith & Wesson.

20 Q. And what type of magazine is that?

21 A. This magazine is again another Springfield magazine.
22 It's designed to hold a .40 Smith & Wesson cartridge.

23 Q. Now, with regard to the four magazines that you just
24 previously looked at, and that's Government's Exhibit 70,
25 Government's Exhibits 101, 102 and 103, a total of four

1 magazines, how did you examine them and test them when they
2 were received in the lab?

3 A. I think you first have to start with the pistol. The
4 pistol that I showed you first. I have to take notes on it.
5 Basically I'm going to describe what I see on the pistol,
6 serial number, the caliber, the manufacturer. And then with
7 the magazines I'm going to take them to my water tank room.
8 And if you were in my laboratory you have to imagine a large
9 tank that's probably about ten feet long, maybe three feet wide
10 and four feet tall. Has a large hole in one end. Basically
11 what I did is I took that pistol after I determined that it was
12 safe to handle, went into this room, took each one of the
13 magazines with one cartridge in each magazine and I actually
14 shot into this tank of water with each magazine.

15 Q. And were all of the magazines functional?

16 A. Yes. They were.

17 Q. Did they all fit into the gun which is Exhibit 73?

18 A. Yes. They did.

19 Q. And did the gun operate?

20 A. Yes. The gun functioned properly.

21 Q. Now, you said you loaded one round of one cartridge
22 into each magazine. Was that a cartridge that you received
23 from the FBI in evidence related to its case or was that from
24 somewhere else?

25 A. No. We have our own working stock of ammunition. So

1 I used something from our own stock at the lab.

2 Q. Now, did you also receive ammunition or cartridges
3 relating to this case to be examined at the lab?

4 A. Yes. I did.

5 Q. Okay. I'm going to show you first Government's
6 Exhibit 114 already in evidence. And what is that?

7 A. These are two boxes of ammunition that I received in
8 the laboratory in regards to this case.

9 Q. And what did you do when you received it? How did
10 you analyze it?

11 A. Well, first of all the cartridges which are now at
12 the bottom of the bag were actually in the boxes. After we
13 took notation about the actual boxes, the cartridges were
14 removed and then I basically categorized the class
15 characteristics of the cartridges, what caliber, what the
16 cartridge cases are made out of, the type of bullet and what
17 the bullet is made out of.

18 Q. And were they all functional bullets in your
19 estimation?

20 A. They all have all the physical characteristics of
21 functional ammunition.

22 Q. And what is the caliber?

23 A. These are .40 Smith & Wesson.

24 Q. Now showing you Government Exhibit 115 already in
25 evidence. Do you recognize that?

1 A. Yes. I do.

2 Q. What is that?

3 A. This is a bag of loose ammunition that I received in
4 regards to this case.

5 Q. And do you know how many cartridges or rounds are in
6 that exhibit?

7 A. There are 22 rounds I believe.

8 Q. And do you recognize it as being the same ammunition
9 that you received in the lab?

10 A. Yes. Each one of these has my initials marked on
11 them to include the Q identifier.

12 Q. And looking back at Government's Exhibit 114 which
13 you've previously examined a minute ago -- that was the two
14 boxes of ammunition -- what did you do to recognize these items
15 as items that you previously looked at?

16 A. Well, on each one of those cartridges are my initials
17 just like they are on these cartridges as well.

18 Q. And that's for every round of ammunition in both --

19 A. Yes.

20 Q. -- of those boxes?

21 A. Every round.

22 Q. I'm showing you Government's Exhibit 148 in evidence.
23 Do you recognize that?

24 A. Yes. I do.

25 Q. And what is that?

1 A. These are actually the test fires that I made using
2 the pistol. They're four bullets and now four cartridge cases.

3 Q. Excuse me. That's for identification. That's not --
4 148 is not in evidence.

5 And are those the cartridges that you took to test fire
6 these from FBI stock?

7 A. That's correct.

8 Q. So these were not bullets that came with the evidence
9 you received related to this case?

10 A. That's correct.

11 Q. Now, do you know how many total rounds of ammunition
12 you received to analyze related to this case?

13 A. There were 143 rounds of ammunition.

14 Q. And were they all the same manufacturer?

15 A. No. They were not.

16 Q. Were they all the same caliber?

17 A. They were all the same caliber.

18 Q. So would all 143 rounds that you received in the lab
19 operate in the gun, the 40-caliber gun which is Government's
20 Exhibit No. 73?

21 A. That's correct. They are the proper caliber to
22 function in the pistol.

23 Q. And finally in your expert opinion is Government's
24 Exhibit 73, the 40-caliber gun, is that capable of expelling a
25 projectile by the action of an explosive?

1 A. Yes. It is.

2 Q. And you found it to be operable?

3 A. Yes.

4 Q. And just one final question. Could you just identify
5 the exact make and model of this firearm?

6 A. Sure. It's a Springfield Armory Model XD 40.

7 Q. And that's 40-caliber?

8 A. It is a 40-caliber. Yes. .40 Smith & Wesson.

9 Q. And what type of pistol is it as far as is it
10 automatic, semiautomatic?

11 A. Okay. It's a semiautomatic pistol. So basically the
12 way a semiautomatic pistol works with one single pull of the
13 trigger it will fire one time, but as long as there's another
14 cartridge in the magazine it will load that cartridge but it
15 will not fire it until you pull the trigger again or you've run
16 out of ammunition.

17 MR. SCHNEIDER: Pass the witness, Your Honor.

18 MR. BOYD: No questions.

19 THE COURT: You may step down, sir. You may be excused.

20 MR. FRAZIER: Government's next witness will be Ronald
21 Stamper.

22 (The witness was sworn.)

23 DIRECT EXAMINATION

24 BY MR. FRAZIER:

25 Q. And would you please introduce yourself to the ladies

1 and gentlemen of the jury?

2 A. Ronald Stamper.

3 Q. How are you employed?

4 A. I'm a federal servant with Fort Hood, Texas. I'm the
5 chief of force protection there.

6 Q. And what is force protection at Fort Hood?

7 A. It's the umbrella agency that has the antiterrorism
8 officers, emergency management officers and the intelligence.

9 Q. Okay. And what's your responsibilities at Fort Hood?

10 A. Mainly establishing the security of the post and
11 coordinating all the different security elements on the post
12 and with the locals.

13 Q. All right. And when you say the locals, you're
14 talking about the areas outside of post like Killeen, Copperas
15 Cove, Harker Heights?

16 A. Yes, sir. Cities, counties and state.

17 Q. All right. And would -- as far as force protection
18 is concerned at Fort Hood, are there different levels of force
19 protection in terms of readiness at Fort Hood at any given
20 time?

21 A. Yes, sir. Within our regulation we have force
22 protection conditions, alpha being the lowest -- or normal
23 being the lowest. Excuse me. And then Alpha, Bravo, Charlie
24 and Delta increase significantly as our threat increases.

25 Q. All right. And if an event occurred outside of post

1 in a restaurant where a destructive device went off during a
2 lunch hour where soldiers might be present or are present,
3 would that cause a reaction on the part of Fort Hood regarding
4 the force protection threat level?

5 MR. BOYD: Your Honor, I'm going to object as to this
6 answer. It calls for speculation for an event that just simply
7 didn't happen. It is inappropriate for him to comment on
8 something that just simply didn't happen.

9 MR. FRAZIER: And again, Your Honor, it's an element of
10 Count One of the offense. Congress said it's an element.

11 THE COURT: Objection overruled.

12 BY MR. FRAZIER:

13 Q. What would happen to the -- if an event like that
14 happened, what would be the reaction of Fort Hood regarding the
15 force protection level?

16 MR. BOYD: Your Honor, could I please have the jury
17 instructed as to the purpose of the answer?

18 THE COURT: To prove one of the elements of the
19 government's charges.

20 BY MR. FRAZIER:

21 Q. You can answer the question.

22 A. With an incident that would have occurred that close
23 to Fort Hood, my recommendation to the senior commander would
24 have been to go to force protection condition Delta.

25 Q. And what happens when that recommendation of Delta is

1 put into place?

2 A. Automatically we close the installation access
3 control points and we start inspecting every vehicle that comes
4 onto the installation, and that includes any briefcases,
5 packages, anything inside that vehicle also. We reduce the
6 number of access control points so we can only bring in
7 essential personnel and emergency personnel. Everybody else is
8 turned away at the gate at Delta mainly because it takes so
9 much manpower just to search the folks we need to get in and
10 run the installation.

11 Q. All right.

12 A. All nonessentials are sent home and normally we'll
13 back up traffic on the highway system for miles in both
14 directions probably within 15, 20 minutes. That's why we have
15 to coordinate with the Texas DPS and the local law enforcement
16 folks to let them know what's going on --

17 Q. All right.

18 A. -- mainly for the safety reasons.

19 Q. All right. Now, let me start with the communication
20 aspect of this. If Delta's imposed and the post is closed,
21 what type of communication responsibilities are kicked in? Who
22 is communicated with regarding post closure?

23 A. Initially with our local liaison team which consists
24 of my office, department of emergency services, our police
25 folks, fire department, we would start notifying all the local

1 law enforcement agencies, the local school, we would coordinate
2 with the County sheriff's offices, Coryell and Bell. We would
3 let the Texas DPS know through our point of contact there and
4 then if that incident of that nature would have occurred I
5 would also picked up the phone and called the FBI in Austin and
6 informed them what was going on and what we were doing to
7 counteract that. With the closing of the gates we also turn
8 away all cargo vehicles that would normally come in and deliver
9 for at least 24 hours and then up to three days while we're on
10 Delta and the only cargos that we would allow in after the
11 first day would be things that were detrimental if they didn't
12 come in for the deployment of troops.

13 Q. All right. Let me go back to the communication for
14 just a second. Once you make the initial communication -- and
15 what are the -- outside the local law enforcement agencies you
16 mentioned there's some folks on post that would need to be
17 notified so they could respond to do other notifications. Who
18 are the post law enforcement entities?

19 A. Post law enforcement the DES. They would notify all
20 the local law enforcement agencies within our area. Our fire
21 department chief would start notifying the fire department
22 folks because we have MOAs and MOUs with the local fire
23 fighters. So we would --

24 Q. You mean memo of understanding?

25 A. Memo -- yes, sir. I'm sorry.

1 Q. And DES stands for director of emergency services?

2 A. Yes, sir.

3 Q. Okay.

4 A. Our DES has our police force and our fire department
5 inside of it.

6 Q. Okay.

7 A. So DES has both of those and you have a chief for the
8 police and a chief for the fire department with one colonel
9 that runs it. But they have to notify all the locals. The
10 fire department because we may or may not be able to meet the
11 commitments in our MOUs or MOAs because of the higher threat
12 condition.

13 Q. Right.

14 A. The local law enforcement because the traffic being
15 backed up and everybody being pushed out into their
16 communities. And then Texas DPS also because 190 runs through
17 Fort Hood so it backs up in both directions for miles within a
18 few minutes.

19 Q. All right. And what about CID? Criminal
20 Investigation Division?

21 A. The CID would notify their counterparts at other
22 installations if we think that the threat is targeted towards
23 more than one installation. They would also even if the
24 threat's local to us put out a report that would go out to the
25 other CIDs so they would be aware of what was happening so they

1 could look for the same type of actions at their military
2 installations. So that gets blasted across pretty much all CID
3 offices when they put out their reports.

4 Q. Does that mean every CID office in the United States
5 would get the reports?

6 A. They're going to get the message. Yes.

7 Q. It's a communication from Fort Hood, Texas to other
8 military installations outside of the State of Texas?

9 A. Yes, sir. It would go up to their headquarters and
10 then come back down to the installations.

11 Q. And there's a number of installations outside of Fort
12 Hood that would get that communication?

13 A. Oh, yes, sir.

14 Q. Okay. Now, you mentioned something about cargo and I
15 want to come back to that. What would happen to cargo
16 regarding cargo shipments during Delta at the main gate?

17 A. Well, the first 24 hours we turn all cargo away.
18 It's very confusing at the gates when you have multiple
19 vehicles being searched, multiple cars coming in. So all the
20 cargo trucks are turned away for the first day where we try to
21 figure out what's going on and what the threat is.

22 Q. Okay. Does that include cargo not just from within
23 the State of Texas but also cargo delivering from outside --

24 A. Anything that comes to the door for the first day's
25 turned away, sir.

1 Q. And that would include cargo shipments from outside
2 the State of Texas?

3 A. Yes, sir.

4 Q. Okay.

5 A. After the first 24 hours we would coordinate with our
6 director of logistics to see if there's anything that he needs
7 delivered on its way in that would affect deployment of troops.
8 So if there's a shipping company in a semitruck coming in, we'd
9 allow that truck in but they're escorted from the gate to the
10 point where they're doing their drop-off and back out. Any
11 vehicles from FedEx, UPS, DHL, they're all going to be turned
12 away for as long as we're at Delta because they make multiple
13 stops and we cannot control that vehicle and you don't really
14 know what it's bringing onto the installation.

15 Q. So in other words those private carriers are --
16 during Delta are turned away the entire time just because they
17 make frequent trips to Fort Hood?

18 A. Yes, sir.

19 Q. And do they routinely carry shipments from outside
20 the State of Texas for delivery onto Fort Hood?

21 A. Yes, sir. Because of the way we even order our
22 supplies, each office has its own pot of money that they work
23 through E-Mall which is the GSA web site that we use to buy
24 things.

25 Q. And GSA, how do they acquire these things for sale or

1 for purchase by Fort Hood?

2 A. They -- through the E-Mall system they spread it out
3 amongst different commercial businesses so you don't focus on
4 just one business to give all your business to in the Army. So
5 by going through E-Mall I may order paper and it may come in
6 from California. I may order pens and it could come in from
7 Oregon. You just don't know. It's however they package it by
8 spreading your business around.

9 Q. And again all of these -- these businesses are not
10 just in the State of Texas. They're throughout the United
11 States --

12 A. Yes, sir.

13 Q. -- in other states and they're -- whose products are
14 being shipped to Fort Hood through GSA?

15 A. Yes, sir.

16 Q. And as a result of Delta, that is stopped during
17 the --

18 A. Yes, sir. That's stopped completely until we go at
19 least to FB Con Charlie.

20 Q. Okay. Now, what is the effect of traffic on the
21 interstate highway or U.S. Highway 190 -- when Delta is in
22 place what happens to cargo -- interstate shipments of cargo on
23 18-wheelers when the post is closed?

24 A. Well, in the past, sir, when we've had major
25 incidents where we're at Delta for more than one or two days

1 we've actually coordinated with the Texas DPS and they've put
2 out their automated signs trying to divert some of the cargo
3 trucks around the 190 section that goes through Fort Hood
4 because they know it's going to be bumper to bumper. An
5 example of -- if you go back to the 911 time frame to get just
6 from Killeen to the front gate of Fort Hood about a six-mile
7 trip could take five or six hours because it's that bumper to
8 bumper traffic and that goes all the way back two towns all the
9 way back into Harker Heights and it'll go all the way into
10 Cove, Copperas Cove on the other side.

11 Q. Okay.

12 A. So they didn't want the trucks sitting there
13 especially if they have haz mat. So we try to divert them
14 through another loop or another small highway.

15 Q. And these are 18-wheelers --

16 THE COURT: Mr. Frazier, don't you think you've pretty
17 much made your interstate commerce evidence requirement?

18 MR. FRAZIER: Yes, sir. I'll pass the witness.

19 THE COURT: Thank you.

20 Any questions?

21 MR. BOYD: Your Honor, I don't have any questions of this
22 witness. I would just ask for an in limine instruction in
23 regards to the jury.

24 THE COURT: You may step down, sir.

25 THE WITNESS: Thank you, sir.

1 MR. FRAZIER: Next witness, Your Honor, would be Tony
2 McRae.

3 THE COURT: How long will this witness take, Mr. Frazier?

4 MR. FRAZIER: It's just a predicate for a recording. It's
5 from the jail. I think he may be upstairs. They're bringing
6 him down.

7 THE COURT: Well, your intention is to call the witness
8 and play a recording?

9 MR. FRAZIER: Yes, sir, but it's a fairly short recording
10 about four minutes. About four minutes in length. Yes, sir.

11 MARSHAL: That witness stepped out.

12 MR. FRAZIER: He's in the rest room.

13 THE COURT: Let's take our afternoon recess at this point.

14 LAW CLERK: All rise.

15 (Jury exited the courtroom at 3:21.)

16 LAW CLERK: Court will stand in recess for 20 minutes.

17 (A break was taken from 3:25 to 3:43.)

18 LAW CLERK: All rise.

19 (The jury entered the courtroom at 3:43.)

20 THE COURT: Be seated, everyone.

21 MR. FRAZIER: Tony McRae will be our next witness, Your
22 Honor.

23 (The witness was sworn.)

24 DIRECT EXAMINATION

25 BY MR. FRAZIER:

1 Q. And would you please introduce yourself to the ladies
2 and gentlemen of the jury?

3 A. Lieutenant Anthony McRae. I work for McLennan County
4 Sheriff's Office.

5 Q. And do you work at the McLennan County Jail?

6 A. Yes, sir.

7 Q. What are your duties there at the jail?

8 A. Lieutenant over security, administrative duties over
9 McLennan County jail.

10 Q. All right. And are you one of the custodians of the
11 jail telephone system -- monitoring system the jail has for
12 telephone calls?

13 A. Yes, sir. I am.

14 Q. And are you -- that is, you have care, custody and
15 control of the recording equipment and the calls that are
16 recorded on it?

17 A. Yes, sir.

18 Q. What type of system does McLennan County use to
19 record telephone calls?

20 A. McLennan County Sheriff's Office jail uses Global Tel
21 Link. It's a monitoring system that records all completed
22 calls made from inside our facility to outside by inmates.

23 Q. All right. And where does it record to?

24 A. Records to the main frame there at the jail.

25 Q. Is it backed up at another location?

1 A. Yes, sir. I believe it is by GTL.

2 Q. Okay. Do you have access to the hard drive of that
3 recording equipment?

4 A. No, sir.

5 Q. I mean not at the GTL but at the McLennan County
6 Jail?

7 A. Oh, yes, sir. Yes, sir.

8 Q. Okay. And are you able to -- that is, if you wanted
9 to access it to make a copy of a particular telephone call,
10 could you do that?

11 A. Yes, sir.

12 Q. And are the recordings that are done on the Global
13 Tel system, are they done in the regular course of business at
14 the McLennan County Jail?

15 A. Yes, sir.

16 Q. And is the recording equipment, does it accurately
17 record the statements or calls being made between persons at
18 the jail and outside the jail?

19 A. Yes, sir.

20 Q. And is the -- is it part of the business of McLennan
21 County Jail to keep these recordings in the regular course of
22 business?

23 A. Yes, sir. It is.

24 Q. And are they made at or near the time -- in fact are
25 they recorded instantaneously as the conversation takes place?

1 A. Yes, sir.

2 Q. And is it a complete -- have you had a chance to look
3 at Government's Exhibit No. 149 which I'm putting up on this
4 screen here prior to coming into court today?

5 A. Yes, sir. Those are my initials and today's date.

6 Q. Okay. And you've had a chance to record it?

7 A. Yes, sir.

8 Q. And likewise is there -- does the recording itself
9 it's an audio recording with a transcript on it, correct?

10 A. Yes, sir.

11 Q. Have you had a chance to review the transcript as the
12 recording plays?

13 A. I have.

14 Q. Is it a fair and accurate representation of the
15 recording that takes place?

16 A. It is.

17 Q. And likewise do you recognize the voices on the
18 recording?

19 A. I do.

20 Q. And who is the male voice on the recording marked
21 149?

22 A. That's inmate Abdo.

23 Q. Naser Jason Abdo?

24 A. Yes, sir.

25 Q. And was there another voice on the recording as well?

1 A female voice?

2 A. Yes, sir.

3 Q. And who is that?

4 A. That's Carly Gordon the reporter from Nashville.

5 Q. All right. And was -- this recording 149 was made
6 when?

7 A. November 22nd I believe.

8 Q. Or November 20th of 2011 or 22nd or the 20th of 2011?

9 A. Yes, sir. 11-20 of '11. Yes, sir.

10 MR. FRAZIER: Okay. We'll offer 149 into evidence at this
11 time.

12 MR. BOYD: Your Honor, no objection.

13 THE COURT: It's admitted.

14 (Exhibit(s) admitted: G149)

15 MR. FRAZIER: If you could play 149 at this time.

16 THE COURT: Did you say something about transcripts?

17 MR. FRAZIER: I'm sorry?

18 THE COURT: Do you have transcripts of this?

19 MR. FRAZIER: The transcript is actually on the -- so
20 instead of handing them out it'd be easier just to read the
21 monitors.

22 (Audio played.)

23 BY MR. FRAZIER:

24 Q. And, Lieutenant McRae, there was one word redacted in
25 there. Other than that small redaction, was everything an

1 accurate recording of the actual telephone call that took place
2 on November the 20th, 2011?

3 A. Yes, sir. It is.

4 MR. FRAZIER: That's all we have. Pass the witness.

5 Oh, I'm sorry. I'm sorry, Your Honor. There is another
6 clip to this. Before I pass the witness if we could play the
7 next clip.

8 (Audio played.)

9 MR. FRAZIER: Now we pass the witness, Your Honor.

10 MR. BOYD: No questions.

11 THE COURT: You may step down, sir.

12 MR. SCHNEIDER: The government calls Karen Anderson.

13 (The witness was sworn.)

14 DIRECT EXAMINATION

15 BY MR. SCHNEIDER:

16 Q. Good afternoon, Lieutenant Anderson.

17 A. How are you?

18 Q. Would you please introduce yourself to the members of
19 the jury?

20 A. My name is Karen Anderson.

21 Q. And by whom are you employed?

22 A. The McLennan County Sheriff's Office.

23 Q. How long have you worked there?

24 A. For 18 years.

25 Q. And what is your current rank there?

1 A. Lieutenant.

2 Q. What are your responsibilities as a lieutenant at the
3 sheriff's office?

4 A. I oversee the daily jail operations which consist of
5 feed and care of inmates.

6 Q. So are you technically assigned to the McLennan
7 County Jail?

8 A. Yes. I am.

9 Q. Are you one of the people at the jail that has care,
10 custody and control of the system that records in person jail
11 visits?

12 A. Yes, sir.

13 Q. Are you familiar with that system?

14 A. Yes, sir.

15 Q. What is the name in that system?

16 A. View Gate.

17 Q. Do you know where it records to?

18 A. Yes, sir. It records on DVRs which actually stores
19 on hard drives down at the visitation center.

20 Q. And is that hard drive located at the jail?

21 A. Yes, sir. No. It's actually located at the
22 visitation center.

23 Q. Do you have access to the hard drive and to the
24 system?

25 A. Yes, sir.

1 Q. Can you tell from looking at a given video from that
2 system if it came from within the McLennan County Jail?

3 A. Yes, sir.

4 Q. Does the jail keep video surveillance of visits in
5 the regular course of its business?

6 A. Yes, sir.

7 Q. Is it part of the McLennan County Jail's normal
8 business routine to accurately record jail visits?

9 A. Yes, sir.

10 Q. Is the video recorded at the time of the visit or at
11 least very close to that time?

12 A. Yes, sir.

13 Q. Does the system have both audio and video components
14 to the recording?

15 A. Yes, sir. It does.

16 Q. And were you asked to provide a surveillance -- a
17 video clip of an in jail visit?

18 A. Yes, sir.

19 Q. And have you seen Government's Exhibit No. 150
20 before? Have you previously reviewed a CD containing the video
21 and audio of a jail visit concerning the defendant?

22 A. Yes, sir. I have.

23 Q. And did you review the entire visit?

24 A. Yes, sir. I did.

25 Q. Did you also review it in regards to a transcript?

1 A. Yes, sir. I did.

2 Q. And did you compare the transcripts and the video?

3 A. Yes, sir.

4 Q. And was it accurate?

5 A. Yes, sir.

6 Q. Was the video a fair and accurate portrayal of the
7 visit?

8 A. Yes, sir.

9 MR. BOYD: No objection.

10 THE COURT: It's admitted.

11 MR. SCHNEIDER: Your Honor, the government moves Exhibit
12 150 into evidence.

13 THE COURT: It's admitted.

14 (Exhibit(s) admitted: G150)

15 BY MR. SCHNEIDER:

16 Q. Now, in pulling this video, were you able to verify
17 which inmate was involved in this video, who's shown in the
18 video?

19 A. Yes, sir. I was.

20 Q. Which inmate was that?

21 A. Naser Abdo.

22 Q. And have you previously seen him in the jail?

23 A. Yes, sir. I have.

24 Q. Did you know what he looked like prior to pulling the
25 video?

1 A. Yes, sir. And we always take a picture down there
2 when we pull video.

3 Q. Okay. And are you able to tell from the computer
4 system who the other participant in the conversation is?

5 A. Yes, sir.

6 Q. And who was it in this video?

7 A. It was his mother.

8 Q. Now, when you have an in jail visit, an in person
9 jail visit, is there any policy for notification to the people
10 that are in the audio and video that their conversations will
11 be recorded?

12 A. Yes, sir. At visitation we actually have signs
13 posted in the visitation area and in the lobby.

14 MR. SCHNEIDER: Okay. If we can play Clip No. 1.

15 (Video played.)

16 BY MR. SCHNEIDER:

17 Q. And before we go to the next clip, one question,
18 Lieutenant Anderson. Can you tell from that video what the
19 date of that visit was? We can put it up on the next video.
20 Is there a time stamp on the video or a date stamp?

21 A. Yes, sir.

22 MR. SCHNEIDER: So if we play the next clip.

23 (Video played.)

24 BY MR. SCHNEIDER:

25 Q. So, Lieutenant Anderson, were you able to tell what

1 the date stamp or time stamp of the visit was?

2 A. Yes, sir. It was July 30th, 2011.

3 Q. Okay. Thank you.

4 MR. SCHNEIDER: If we can play the next clip.

5 (Video played.)

6 MR. SCHNEIDER: And if we could play the next clip.

7 (Video played.)

8 MR. SCHNEIDER: And the next clip, please.

9 (Video played.)

10 MR. SCHNEIDER: And can we play the next clip?

11 (Video played.)

12 MR. SCHNEIDER: And can you play the next clip, please?

13 (Video played.)

14 MR. SCHNEIDER: One more clip.

15 (Video played.)

16 MR. SCHNEIDER: Pass the witness, Your Honor.

17 MR. BOYD: No questions, Your Honor.

18 THE COURT: You may step down, ma'am.

19 MR. SCHNEIDER: The government calls Richard Stryker.

20 (The witness was sworn.)

21 DIRECT EXAMINATION

22 BY MR. SCHNEIDER:

23 Q. Good afternoon, Agent Stryker.

24 MR. BOYD: Your Honor, may we approach briefly?

25 THE COURT: Surely.

1 (On-the-record bench conference, to wit:

2 MR. BOYD: Your Honor, at the appropriate time I'm going
3 to anticipate we need to object to the evidence outside the
4 presence of the jury in regards to what I believe is going to
5 be a video that the government's going to try and offer through
6 this witness in regards to the detonation of a device, and I
7 don't know if the Court wants me to do that now or if the Court
8 wants me to wait.

9 THE COURT: Is that what you're going to do?

10 MR. SCHNEIDER: Judge, we're going to be putting in a
11 video that we discussed during the motion in limine because
12 it's part of our case and we have to prove one of the elements
13 of what would have happened if the bomb had in fact been
14 detonated. We have our FBI re-enactment of the bomb.

15 MR. BOYD: And I would like the ability to take him on
16 voir dire outside the presence of the jury before the Court
17 makes that determination.

18 THE COURT: For what purpose?

19 MR. BOYD: To establish the fact that what they created is
20 not in fact close to what the device that would have been built
21 was. It's a complete misrepresentation. Its probative value
22 substantially outweighs the dangers.

23 THE COURT: Okay. All right.

24 (End of bench conference.)

25 THE COURT: Ladies and gentlemen, I'm going to ask you to

1 step out to the jury room for just a moment, please. I need to
2 take up a legal matter.

3 LAW CLERK: All rise.

4 (Jury exited the courtroom at 4:20.)

5 THE COURT: Be seated, everyone.

6 You want to voir dire the witness, Counsel?

7 MR. BOYD: Yes, Your Honor.

8 VOIR DIRE EXAMINATION

9 BY MR. BOYD:

10 Q. Mr. Stryker, what is your full name?

11 A. Richard Nicholas Stryker.

12 Q. And are you someone that the government purports to
13 be an expert in regards to creating and -- creating, testing
14 and testifying regarding explosive devices?

15 A. The term expert's usually left up to a court to
16 decide, but I am a trained and qualified forensic examiner.

17 Q. And is it -- in this case were you asked to do some
18 things for the U.S. government?

19 A. Yes.

20 Q. And was one of those things that you were asked to do
21 to build a device and test it?

22 A. Yes.

23 Q. And when you built and tested that device, the device
24 that you built and tested you built and tested using your
25 expert knowledge, right?

1 A. I used primarily the information that was contained
2 in the Inspire magazine article which was part of the evidence
3 that was submitted. I didn't just decide what to do on my own
4 or with my knowledge and experience.

5 Q. But you didn't use only the information contained in
6 the Inspire magazine knowledge?

7 A. Primarily that information.

8 Q. But, sir, you didn't use only the information
9 contained in the Inspire magazine article, did you?

10 A. Not to the strict sense of only. No.

11 Q. You added to it?

12 A. Can you tell me what you mean by added to it?

13 Q. You used your own expertise in fashioning the device
14 that you tested and that you built and that you created?

15 A. I'm not really sure what you mean. I mean, I used
16 primarily that information which is readily -- I mean, it
17 teaches somebody who doesn't know much about it and that's what
18 I used as my guide. As far as adding to it, I don't really
19 know what substantive issue you may be referring to that would
20 only allow somebody with a great deal of experience or
21 expertise to lend to that.

22 Q. Sir, I'm just trying to understand if you built the
23 device exactly as it was portrayed in the article or if you
24 built the device differently than was portrayed in the article.

25 A. There may have been some slight differences, but the

1 article itself gave some leeway and the article itself did not
2 specify necessarily every minute step. I think it leaves
3 something to common sense.

4 Q. The article was pretty specific.

5 THE COURT: Is that a question?

6 BY MR. BOYD:

7 Q. Wasn't it?

8 A. There was some specificity with the article. That's
9 correct.

10 Q. And for instance you changed the ignition device?

11 A. We did for safety reasons.

12 Q. Well, you changed the ignition device, didn't you?

13 THE COURT: He just answered that.

14 BY THE WITNESS:

15 A. We changed it. Yes.

16 BY MR. BOYD:

17 Q. Now, when you changed the ignition device, you didn't
18 change it to something that was like a filament. You changed
19 it to an electric match, right?

20 A. It's the functional equivalent. It is like a
21 filament.

22 Q. Well, an electric match has the power to set off a
23 blasting cap, right?

24 A. That doesn't make sense to me. Can you be a little
25 bit more specific?

1 Q. Electric match generates far more power than the
2 filament of a light bulb?

3 A. I would disagree with that.

4 Q. Okay.

5 A. It creates heat and that's also what a filament does.
6 The filament is typically a metal like tungsten which burns
7 extremely intensity on the order of several thousand degrees
8 for an instantaneous moment. So the filament is actually a
9 stronger source of heat. There's just -- there's just nuances
10 or differences in a filament and electric match but essentially
11 they're the same thing. For instance in a blasting cap one
12 could have a bridge wire to ignite the more sensitive mixtures
13 like a lead azide or lead styphnate or an electric match. It
14 does the same purpose. In fact in detonators or blasting caps
15 you have one or the other. They're both doing the same thing.

16 Q. Did you test the filament of the lights to determine
17 what they were made of?

18 A. No.

19 Q. So you don't know what they were made of and you
20 don't know what temperature they reached. You essentially just
21 know that these Christmas lights were Christmas lights?

22 A. And I know that lights like those the filament gets
23 extremely hot in the order of several thousand degrees.

24 Q. With respect to -- you built a device that just
25 simply didn't exist in this case, correct?

1 A. We built a device with the components that existed in
2 this case.

3 Q. But you're aware that no device existed, right?

4 MR. SCHNEIDER: Objection, Your Honor. This has nothing
5 to do with the voir dire of the witness for his expert on this
6 matter.

7 THE COURT: Sustained.

8 BY MR. BOYD:

9 Q. When you built this device and tested it, you
10 intended it to be used and viewed by a jury?

11 A. I knew that it was going to be, yes, or likely to be
12 depending on whether the Court allowed it.

13 Q. And rather than using information that was just
14 available to Mr. Abdo, you did interject some expert experience
15 into the creation of that device?

16 MR. SCHNEIDER: Objection, Your Honor. Asked and
17 answered.

18 THE COURT: Sustained.

19 BY MR. BOYD:

20 Q. For instance, you didn't add sugar to the mix, did
21 you?

22 A. It wasn't called for.

23 Q. And furthermore --

24 MR. BOYD: Would you bring up Page 34 of No. 67?

25 BY MR. BOYD:

1 Q. In this instance there is a call for sugar as
2 indicated on Page 34 of this document, right?

3 A. Yes, sir, as it pertains to the pyrotechnic mixture
4 on match heads.

5 Q. Okay. Now, with respect to the rest of the article,
6 nowhere in the rest of the article does it indicate you
7 shouldn't apply sugar?

8 A. I'm not aware of the reference to sugar being used
9 pro or con for the rest of the article.

10 Q. Okay. Are you aware that there was sugar found at
11 the scene?

12 A. Yes.

13 Q. Okay. Furthermore, whether or not sugar was added is
14 a factor that would affect whether or not the device
15 functioned?

16 A. Not necessarily.

17 Q. But you didn't test it so you wouldn't know?

18 A. I would think that most people would realize that gun
19 powder or smokeless powder does not need to have sugar added.
20 It's not added to cartridge casings. It's not any formula for
21 reloaders. It's not needed. I mean, it's just so basic I
22 don't really know where to go with this.

23 Q. Additionally you're aware that the article calls for
24 the creator of whatever device gets created to fill up the
25 pressure cooker with the inflammable material, right?

1 A. To fill it up? I'm not necessarily familiar with
2 that.

3 MR. BOYD: Please bring up Page 40 of Exhibit 67.

4 BY MR. BOYD:

5 Q. Here it states the pressurized cooker is the most
6 effective method. Glue the shrapnel to the inside of the
7 pressurized cooker. Then fill in the cooker with the
8 inflammable material.

9 That says to fill in the cooker, right?

10 A. It says to fill in the cooker. This article is rife
11 with many improper sentence structure grammatical errors. In
12 this one it says fill in. To me that means to put it in. It's
13 not necessary to fill it to the top. So that instruction to me
14 essentially says put in whatever powder you have. The article
15 also refers to the fact that using match heads is not generally
16 a good idea if you're going to use a pressure cooker because it
17 would take a heck of a lot of matches to, you know, get a
18 substantial quantity of them for that volume. It doesn't
19 specify what level to fill it to. It doesn't specify how much
20 powder to have. It depends. All you need to do is fill the
21 vessel, whatever it is, pipe, pressure cooker, with sufficient
22 powder that when it turns from a solid to a gas it overcomes
23 the holding pressure of that container and I think the article
24 does specify that you need to have a container that's strong
25 enough to hold that pressure briefly enough to cause an

1 explosion.

2 Q. It's fair to say that you didn't fill up the pressure
3 cooker with material?

4 MR. SCHNEIDER: Objection, Your Honor. That's been asked
5 and answered.

6 THE COURT: Sustained.

7 BY MR. BOYD:

8 Q. The placement of the ignition source. Where does it
9 indicate in this article the placement of the ignition source?

10 A. It doesn't. There's a picture there with it looks
11 like a Christmas tree bulb in -- I don't really know what model
12 pressure cooker this is, but it looks like the lid or the top.

13 Q. Now, the item that you built didn't have a placement
14 of the ignition source at the top, did it?

15 A. We did not put our ignitor at the top. That's
16 correct.

17 Q. In fact, you put the ignition source at the bottom?

18 A. We did.

19 Q. And you did that based on your knowledge and
20 expertise?

21 A. Again, one does not have to have really any sort of
22 knowledge or expertise to discern that the ignition source has
23 to be in contact with the powder that's in there. So if you're
24 going to put it at the top, you would either have to have
25 sufficient quantity so that it touched it or you simply turn it

1 on its side or flip it over. I mean, it's -- again it's --
2 it's extreme common sense. No matter where you put it, you're
3 going to want your powder in contact with it.

4 Q. But you're relying on some degree of expertise in
5 building a device?

6 A. I wouldn't call it expertise again. I would call it
7 common sense again. The whole purpose of this article is to
8 allow somebody with minimal or no experience in building
9 explosive devices to use readily available materials and easily
10 assemble these things.

11 Q. And if you had put it through the top as they had
12 said, there's a very real possibility that the device that you
13 built wouldn't have functioned?

14 A. There is that possibility. However, it does not make
15 it any less of a potential hazard.

16 Q. And by your own testimony, this is a pretty
17 sophomoric design for an explosive device?

18 MR. SCHNEIDER: Objection, Your Honor. This has nothing
19 to do with the voir dire of the witness for this testimony.

20 THE COURT: Sustained.

21 BY MR. BOYD:

22 Q. If you hadn't added your expertise in creating this
23 device, there is a very real possibility that the demonstration
24 that you purport to show to this jury would have failed?

25 MR. SCHNEIDER: Objection, Your Honor. He's already asked

1 this question.

2 THE COURT: Sustained.

3 BY MR. BOYD:

4 Q. You only built one device, not two, correct?

5 A. For the full demonstration, yes.

6 Q. And had you built two devices based on the same
7 amount of material available, the result would have been
8 different as well?

9 A. There's the possibility that there could have been a
10 different effect.

11 Q. Pretty substantial possibility?

12 A. That there would have been a difference? There would
13 have been a difference. I don't know how substantial of a
14 difference there would have been, but when you change some
15 variable in the equation you're going to have some different
16 effect.

17 Q. And even with all of these changes -- well, let me go
18 back. You didn't use a clock, nail, wire electrical system,
19 did you?

20 A. We did not use a nail.

21 Q. And that is clearly called for in this article,
22 correct?

23 A. It talks about using it. Doesn't say that it's
24 necessary.

25 Q. And you're a scientist, correct?

1 A. I'm a forensic scientist. Yes.

2 Q. And so part of the science is being very precise?

3 MR. SCHNEIDER: Objection, Your Honor. This witness has
4 testified about the preciseness of the article and that it
5 leaves different options.

6 THE COURT: I think that's correct and I think you've
7 about gone as far as you can go, Counsel.

8 MR. BOYD: Then just one last question, Your Honor.

9 BY MR. BOYD:

10 Q. What we see in the video that you're trying to show
11 to the jury is a deflagration, correct?

12 A. There's two effects. There's the -- there's a
13 mechanical -- there's an explosion caused by a deflagration.

14 Q. Well, we see the effects of the deflagration when we
15 see the powder burn and that's actually the deflagration,
16 right?

17 A. The powder burning is the deflagration. That's
18 correct.

19 MR. BOYD: Nothing further.

20 Your Honor, I would offer now in regards -- well, I'll
21 wait for cross-examination. If they choose to cross-examine,
22 then I'll make my offer.

23 THE COURT: They're not going to cross-examine.

24 MR. BOYD: Yes, sir.

25 THE COURT: You're going to make your objection I guess.

1 MR. BOYD: Yes, Your Honor. Let me make my objection for
2 the record. Your Honor, I believe that any video shown, any
3 testimony offered in relation to any device built or tested
4 expressly for the purposes of this trial and demonstrating to a
5 jury that the probative value is substantially outweighed by
6 the dangers of unfair prejudice, confusing the issues to the
7 jury, misleading the jury. It's highly speculative in nature.
8 They built a device that didn't -- simply didn't exist and
9 would be a waste of time. And I would ask that anything
10 relating to the video or testimony in regards to the results of
11 any device built or tested or analyzed in preparation for this
12 trial be excluded from the jury.

13 THE COURT: That would be completely overruled.

14 Bring the jury back in.

15 THE BAILIFF: All rise.

16 (The jury entered the courtroom at 4:43.)

17 THE COURT: Be seated, everyone.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. SCHNEIDER:

20 Q. So once again good afternoon, Agent Stryker.

21 A. Good afternoon.

22 Q. Will you please introduce yourself to the jury?

23 A. My name is Richard Stryker. I work in the FBI
24 laboratory as a hazardous device forensic examiner. I'm also a
25 supervisory special agent. I've been there for approximately

1 nine years.

2 Q. How long have you been with the FBI?

3 A. Approximately 14 and a half years.

4 Q. And prior to joining the FBI what, if any, background
5 work did you do?

6 A. Prior to joining the FBI I was in the Navy. I served
7 as a -- both a surface warfare officer on a guided missile
8 destroyer as well as an explosive ordnance disposal officer in
9 the Navy both as an active duty officer and a reserve officer.

10 Q. And how long did you do that?

11 A. Combined active and reserve approximately eight
12 years.

13 Q. And you said you joined the FBI in what year?

14 A. 1997.

15 Q. And when you joined, you joined as a -- what was your
16 position?

17 A. I joined as a special agent. So I received basic
18 special agent training at Quantico and then was assigned to the
19 Philadelphia field office.

20 Q. And how long were you there?

21 A. Approximately five and a half, six years.

22 Q. And were you assigned somewhere else after
23 Philadelphia?

24 A. Yes. After Philadelphia I applied for a position a
25 promotion to the FBI laboratory and received that position.

1 Q. And where is the FBI laboratory?

2 A. It's in Quantico, Virginia.

3 Q. And in applying for and receiving that position did
4 you undergo any specialized training?

5 A. Yes. I did. To become a qualified forensic examiner
6 it takes approximately two years of intensive working with
7 several examiners with their evidence, with their experience
8 and knowledge, taking several oral boards, getting many items
9 signed off and a qualification booklet and also attending a
10 great deal of training.

11 Q. Now, prior to FBI you mentioned your naval experience
12 in EOD. Can you explain what EOD is?

13 A. Yes. EOD stands for explosive ordnance disposal.
14 All branches have EOD technicians and officers and our primary
15 job is to locate, render safe and/or destroy or dispose of all
16 ordnance from something that's very small on up to nuclear
17 weapons.

18 Q. And what kind of training did you receive when you
19 were in the Navy for that position?

20 A. I received the basic training for an EOD technician.
21 At that time it was primarily held in Indian Head, Maryland.
22 And so the Navy receives additional training to most EOD
23 technicians because we deal with underwater ordnance. So
24 there's a great deal of emphasis on that. So it was
25 approximately 14 months in total duration.

1 Q. As a member of the Navy were you an employee of the
2 Department of Defense?

3 A. Yes.

4 Q. And do you know if all members of the uniformed
5 services of the United States, whether it be the Army, Navy,
6 Air Force, Marines are employees of the Department of Defense?

7 A. Yes. They are.

8 Q. Now, you said that you underwent a training period of
9 about two years to become your current position. And what is
10 the title of your current position?

11 A. Forensic examiner.

12 Q. And approximately how many times during the course of
13 your employment as a forensic examiner have you tested
14 explosive devices or components of explosive devices?

15 A. Hundreds of times.

16 Q. And have you previously testified in court on those
17 matters?

18 A. Yes. I have.

19 Q. What courts?

20 A. Federal courts, New York, Tampa.

21 Q. And in each of those -- how many times?

22 A. I believe five or six.

23 Q. And in each of those occasions were you qualified as
24 an expert witness?

25 A. In most of them. One of the venues did not require

1 that, but yes. In the other instances I was.

2 Q. Based on your training and experience are you able to
3 determine the operability of a destructive device?

4 A. Yes. To the extent that the condition of the parts
5 allow that to be discerned.

6 Q. And also based on your training and experience are
7 you able to determine if components are present from which a
8 destructive device may readily be assembled?

9 A. Yes.

10 MR. SCHNEIDER: Your Honor, at this time the government
11 offers Richard Stryker as an expert in the field of the
12 operability of destructive devices and the testing of
13 destructive devices.

14 THE COURT: He'll be allowed to state his opinion.

15 BY MR. SCHNEIDER:

16 Q. Now, in this case were you involved in your role at
17 the lab in testing any items?

18 A. Yes. I was.

19 Q. Were there items that came to the lab in Quantico,
20 Virginia related to this case?

21 A. Yes.

22 Q. And how do they come into the case? Can you
23 generally describe for the jury the process?

24 A. They come in typically via FedEx or equivalent
25 carrier trackable comes down to our evidence control center.

1 In our case they don't open up the packages because of safety
2 concerns because we're part of the explosives unit. So they'll
3 simply start the chain of custody, assign a laboratory number.
4 It comes up to our unit where we open the evidence, check it
5 for safety, inventory it, photograph it again to the extent
6 that's possible. Some things we can't open because we don't,
7 you know, want certain chemical residues to be evaporating
8 there on the spot. And then we'll look at the communication
9 that accompanied the submittal of the evidence and see what the
10 contributor wants done with it. We'll formulate an exam plan
11 which is essentially the flow of evidence, which units are
12 going to get it next, latent fingerprints, DNA, whatever. Then
13 we'll communicate with the contributor of the evidence if we
14 see that something may conflict with one exam. Sometimes
15 forensic exams destroy other potential exams so we want to make
16 sure that we get it right. And then once that's established we
17 start the flow of evidence. We transfer it to other units that
18 need to do other exams on it and then we're, you know, the last
19 ones to get it and perform the hazardous device exams.

20 Q. So when the lab -- when the items come into the lab
21 and they're inventoried, are you part of the decision-making
22 process to see where the items go next?

23 A. Yes. Typically.

24 Q. And can you describe that process and what it's
25 called?

1 A. To develop the exam plan?

2 Q. Yes.

3 A. It's -- the process is again just developing the exam
4 plan. It's an actual, you know, physical piece of paper that
5 we list in which order the items will go to, whether it's again
6 trace evidence, latent fingerprints.

7 Q. And what was your role on the examination plan with
8 regards to the evidence in this case?

9 A. I was the hazardous devices examiner. So I'm going
10 to look at the components for -- depending on what condition
11 they're in. In this case we have components that were
12 primarily unopened or unused. So we take a look at it from
13 functionality. Could these things be used to make a
14 destructive device or a homemade bomb, improvised explosive
15 device. Are the necessary components for that present? That
16 would be the first thing that we would do.

17 Q. Now, do you recall examining the items that you
18 received from the lab?

19 A. Yes.

20 Q. Was that your first step in your process?

21 A. Yes. Essentially just kind of taking inventory for
22 what it is. A lot of times we'll get evidence that isn't
23 really germane to what we need to do with it so we'll just kind
24 of set that aside. We're not going to really have any need to
25 do some exams if it's, you know, DNA swabs or clothing that has

1 nothing to do with a device and then, you know, I'm going to
2 look at the components that I think may have some potential for
3 use as a destructive device.

4 Q. So when you looked at all the evidence in total did
5 you determine that there was certain relevant items that were
6 in evidence that were relevant to bomb making components?

7 A. Yes. I did.

8 Q. Okay. Now I'm going to show you on the screen, if we
9 can put up the following exhibits one by one, show you first
10 with Exhibit No. 57. Government's 57. And is that one of the
11 clocks that you received in the lab?

12 A. Yes. It is.

13 Q. And 58. Is that also a clock?

14 A. Yes.

15 Q. And received by the lab.

16 A. Yes.

17 Q. And we'll go in order. 59. Are those two nine volt
18 batteries received by the lab?

19 A. Yes.

20 Q. And 60. Is that black wire that you received in the
21 lab?

22 A. Yes.

23 Q. Item 61. What is that?

24 A. That's more black insulated wire 16 gauge.

25 Q. Okay. Now let's go to 85. Did you receive that in

1 the lab?

2 A. Yes.

3 Q. And what is that?

4 A. It's a Black & Decker electric drill.

5 Q. And 86. Is that the box for that same drill?

6 A. Yes.

7 Q. Did you receive that in the lab?

8 A. Yes.

9 Q. And 87. And are those drill bits that you received
10 in the lab?

11 A. Yes.

12 Q. 88. Did you receive that wall clock as well?

13 A. Yes. There were a total of four.

14 Q. And 89. Is that the fourth wall clock you received?

15 A. Yes.

16 Q. And all of the wall -- all of the wall clocks you
17 examined? You looked at them?

18 A. Yes. We did.

19 Q. Were they all the same type and brand?

20 A. Yes. They were.

21 Q. And exhibits -- Government Exhibits 90 through 95.

22 Did you receive those exhibits, all bottles of smokeless
23 powder?

24 A. We received samples from those bottles.

25 Q. 97. Did you receive the knife and Leatherman

1 utility?

2 A. Yes. We did.

3 Q. And 100. Did you receive this item, the cut shotgun
4 shells?

5 A. Yes.

6 Q. And Exhibit -- Government's Exhibit 104. That's
7 gorilla tape?

8 A. Yes. We received that as well.

9 Q. And Item -- Government's Exhibit 105? Did you
10 receive those batteries?

11 A. Yes. We did.

12 Q. Government's Exhibit 106. Did you receive that paint
13 brush?

14 A. Yes.

15 Q. Government's Exhibit No. 107. Did you receive that
16 electrical tape?

17 A. Yes.

18 Q. Exhibit 109. Did you receive those screwdrivers and
19 allen wrench?

20 A. Yes. We did.

21 Q. And Exhibit 110. Did you receive that piece to the
22 pressure cooker?

23 A. Yes.

24 Q. Item Government's Exhibit 111. Did you receive these
25 two items, black and red wire?

1 A. Yes.

2 Q. Government's Exhibits 112 and 113. Did you receive
3 this box of sugar and 113 a bag of sugar?

4 A. Yes. We did.

5 Q. Government's Exhibit 117. Did you receive those
6 razor blades?

7 A. Yes.

8 Q. Government's Exhibit 120. Now, this shows the
9 contents of the pressure cooker that was recovered at the
10 scene. Did you receive the contents of the pressure cooker?

11 A. Yes.

12 Q. And how did you receive it? It wasn't --

13 A. Yes. I believe it was in a bag.

14 Q. It wasn't contained in the pressure cooker, was it?

15 A. That's correct.

16 Q. And going back to Exhibit 119. Are you able to see
17 that? Did you receive this exhibit which was shotgun pellets
18 and powder in a plastic cup?

19 A. I don't recall the plastic cup, but I know we
20 received the shotgun pellets and powder.

21 Q. And Government's Exhibit 124. This is the bottom of
22 the pressure cooker. Did you receive the pressure cooker?

23 A. Yes.

24 Q. And is this the large or the small pressure cooker?

25 A. This is the large one.

1 Q. 125. That's the lid. Did you receive that?

2 A. Yes.

3 Q. Government's Exhibit 126. Is that the bottom of the
4 smaller pressure cooker?

5 A. Yes.

6 Q. And --

7 A. The bottom circle and the lid's to the left.

8 Q. And Exhibit 127. Is that the lid you received?

9 A. That's the lid. Yes.

10 Q. Government's Exhibit 128. Did you receive that
11 regulator?

12 A. Yes.

13 Q. Government's Exhibit 129. Did you receive the box
14 that went along with the larger pressure cooker?

15 A. Yes.

16 Q. Government's Exhibit 130. That's the instruction
17 manual. Did you receive that as well for the smaller pressure
18 cooker?

19 A. Yes.

20 Q. Government's Exhibit 134. Did you receive those
21 string of lights?

22 A. Yes. We did.

23 Q. Government's Exhibit 137. Did you receive this item
24 which was a melted razor on a metal lid?

25 A. Yes.

1 Q. Government's Exhibit 138. Did you receive the
2 contact cement at the lab?

3 THE COURT: How many of these exhibits are you going to go
4 through, Counsel?

5 MR. SCHNEIDER: I'm almost done, Your Honor.

6 BY MR. SCHNEIDER:

7 Q. And finally Exhibit 144. Did you receive the
8 cardboard boxes at the lab?

9 MR. SCHNEIDER: Is that 144? Yes.

10 BY MR. SCHNEIDER:

11 Q. I don't know if you can make out.

12 A. The Lowe's boxes?

13 Q. Yes.

14 A. I'd have to check my notes, but I'm not certain with
15 those.

16 Q. Okay. So first looking at these items that we've --

17 THE COURT: Don't -- nope. Nope. Nope. We're going to
18 stop now. You're obviously not going to get anywhere with this
19 witness of any substance. So we'll wait until tomorrow
20 morning.

21 We'll recess until tomorrow morning at 9:00, ladies and
22 gentlemen. Please remember the instructions I've given you not
23 to talk with anyone about the case. Try to prevent yourself
24 from watching anything on the media regarding the case because
25 you're the ones who have been here. You know what's happened.

1 Anything that's reported is going to be secondhand as far as
2 you're concerned. Have a -- get a good night's rest. We're
3 going to try to finish up tomorrow. See you in the morning at
4 9:00.

5 LAW CLERK: All rise.

6 (Jury exited the courtroom at 4:59.)

7 LAW CLERK: Court will stand in recess until 9:00 tomorrow
8 morning.

9 (Hearing adjourned at 5:00.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 WACO DIVISION

4 UNITED STATES OF AMERICA

*

*

*

5 VS.

* CRIMINAL ACTION NO. W-11-CR-182

*

6 NASER JASON ABDO

*

May 24, 2012

7 BEFORE THE HONORABLE WALTER S. SMITH, JR., JUDGE PRESIDING

8 JURY TRIAL PROCEEDINGS

9 VOLUME 4

10 APPEARANCES:

11 For the Government:

Mark Frazier, Esq.

Gregg N. Sofer, Esq.

Lawrence Schneider, Esq.

12 Assistant United States Attorneys

13 PO Box 828

Waco, Texas 76701

14 For the Defendant:

Zachary L. Boyd, Esq.

15 PO Box 870

Copperas Cove, Texas 76522

16 - and -

Michael F. White, Esq.

17 1103 N. Gray

Killeen, Texas 76541

18 Court Reporter:

Kristie M. Davis

19 United States District Court

20 PO Box 20994

Waco, Texas 76702-0994

21
22 Proceedings recorded by mechanical stenography, transcript
23 produced by computer-aided transcription.
24
25

1 (May 24, 2012, 9:08, defendant present.)

2 LAW CLERK: All rise.

3 (The jury entered the courtroom at 9:08.)

4 THE COURT: Be seated, everyone.

5 Good morning, ladies and gentlemen of the jury. I think
6 we're ready to proceed with the examination of Mr. Stryker.

7 MR. SCHNEIDER: Thank you, Your Honor.

8 BY MR. SCHNEIDER:

9 Q. Good morning, Agent Stryker.

10 A. Good morning.

11 Q. Yesterday during your testimony we reviewed a large
12 number of items of evidence you received at the lab. Did you
13 examine all of those items?

14 A. Yes.

15 Q. And from looking at those items could you tell based
16 on your training and experience whether or not those items
17 could be used to make a working bomb?

18 A. Yes. I did.

19 Q. And based on your training and experience and your
20 opinion, if someone intended to use those items to build a bomb
21 or a destructive device, could they be readily assembled into a
22 destructive device?

23 A. Yes. They could.

24 Q. After looking at those items did you test the
25 functionality of any of those items?

1 A. Yes.

2 Q. Which ones and how?

3 A. We tested the clocks simply by inserting a double A
4 battery in them to ensure that they worked and they did. We
5 also took the strand of decorator bulbs, plugged them in. They
6 all illuminated. We also cut one from the strand, touched both
7 ends to a nine volt battery both the positive and negative
8 leads. It illuminated. And we examined the pressure cookers
9 just to make sure that there were, you know, no modifications
10 and that the lids sealed on them. They did. We also examined
11 the batteries to make sure that they had proper voltage. The
12 nine volt batteries typically have a little over nine and half
13 volts, and I believe all of the batteries did or close to or at
14 least over nine volts as well as the triple A batteries had at
15 least one and a half volts each.

16 Q. Now, did you receive a copy of Government's Exhibit
17 67 which was the Inspire magazine article?

18 A. Yes. I did.

19 Q. And that was the article How To Build A Bomb In The
20 Kitchen Of Your Mom?

21 A. Correct.

22 Q. Were you generally familiar with this article before
23 you received it as evidence in this case?

24 A. Yes. I was.

25 Q. And in this case when you were testing the items you

1 received in evidence, did you read the article -- did you read
2 the article?

3 A. Yes. I did.

4 Q. And after reading the article did you determine if
5 the instructions for building a bomb as set forth in that
6 article were sound and could produce a viable bomb or a
7 destructive device?

8 A. Yes. I did. I determined that the article provided
9 sufficient instruction to somebody with little or no experience
10 in building an explosive device with the basic knowledge of how
11 to do so.

12 Q. So in following up on what you just answered, does
13 the article in your opinion call for any expertise in
14 explosives?

15 A. No. Not at all.

16 Q. Did you compare the instructions in the article to
17 the items that you received in evidence in this case that had
18 been recovered at the scene?

19 A. Yes.

20 Q. And were you able to determine if all the necessary
21 components were present to readily assemble a bomb or
22 destructive device by following those instructions?

23 A. Yes. I did and the components were present.

24 Q. After examining the article and the components, did
25 you conduct any other tests?

1 A. Yes. We did.

2 Q. And what was the first test that you conducted?

3 A. First test -- first we didn't use the actual
4 components that were received as evidence. We went out and
5 purchased essentially the same items or like items to the
6 extent that we couldn't find the exact item. Most of the items
7 were obtained at Walmart and we purchased the same clocks,
8 battery, Gorilla tape, couldn't find the exact strand of
9 Christmas tree bulbs or decorator bulbs that were in that pack
10 of ten with the gold star so we bought a standard pack of
11 Christmas tree bulbs, the same type, the small incandescent
12 bulb type of light bulb. And the first thing we wanted to do
13 was determine whether the six different smokeless powders which
14 we purchased the identical smokeless powders from those
15 containers whether a Christmas tree bulb had sufficient energy
16 to ignite all those powders. So we broke the Christmas tree
17 bulbs open like the article specified. We heated them up,
18 dipped them in some water, tapped it on the side and it broke
19 fairly cleanly. We put a couple of grams in a little dish under
20 a fume hood in contact with the filament and just touched them
21 to a nine volt battery and in all cases each type of smokeless
22 powder initiated upon receiving the current which illuminated
23 the filament. The filament burns really intensely for a brief
24 moment of time. It's enough energy to ignite those powders.

25 Next we took a blend of all six out, kind of a homogenous

1 blend, and took a sample from that and again similar fashion,
2 touched it to a nine volt battery and it successfully ignited
3 the powder.

4 Q. With regards to the Christmas lights that were
5 received in evidence by you at the lab, did that -- did those
6 have some decorative covering on the lights itself?

7 A. The ones that we received as evidence were
8 essentially the same type of Christmas bulb. They were gold in
9 color and they were affixed to a -- like a gold star to provide
10 some illumination to make the star more visible or sparkle with
11 the light that was provided. So there was ten bulbs in that
12 strand attached one each to a star.

13 Q. Did the gold star have anything to do with making a
14 bomb?

15 A. Nothing at all.

16 Q. So the light that was in the Christmas lights that
17 were recovered at the scene of the crime, were they similar to
18 the lights that you used when you conducted the test?

19 A. Yes.

20 Q. Did you conduct any other tests?

21 A. We did. The next test that we did was to assemble a
22 device consistent with the directions that were provided in the
23 Inspire magazine article. What we wanted to show with the next
24 test that we did was that -- let me back up one step. We do
25 numerous reconstructions throughout the examinations that we

1 do. We don't always do it exactly like a bomber would do it
2 because the bomber is not necessarily concerned with safety.
3 We are. So we will take incremental steps to show that what
4 we're doing does not substantially change what the bomber
5 intended to do.

6 So in this case we wanted to show that the energy from a
7 Christmas tree bulb igniting smokeless powder was no different
8 from using an electric match. An electric match is something
9 that is professionally made. It's safe and it's reliable. A
10 Christmas tree bulb that's been broken with the filament
11 exposed is not necessarily the safest thing to do. It's
12 expedient. It'll work, but there's also a chance of a misfire
13 where sometimes if the filament breaks, and it talks about it
14 in the article, that you want to, you know, ensure that it's
15 reliable. So if we have a misfire, we have to go through a
16 whole procedure to successfully make it safe again. So that's
17 essentially what we wanted to do is show that the energy
18 provided from an electric match is no different than the energy
19 provided from the illumination of that filament.

20 So we sat up a device. We did it two times; one with a
21 match, one with the filament. We put a couple ounces of the
22 homogenous blend of smokeless powder in one of the pressure
23 cookers. We drilled a hole in the bottom, inserted on one
24 occasion the Christmas tree bulb, poured that powder on top and
25 we built a simple series circuit as was specified in the

1 Inspire magazine article where we have a clock serving as a
2 switch in the fusing system. Essentially when the minute hand
3 on the clock -- we chose to use the minute hand in this case --
4 would time down and meet the other exposed wire, it would make
5 contact and complete the circuit. The other two ends were
6 hooked up to the positive and negative and to the battery.
7 It's the most basic circuit, very simple circuit that one could
8 design or utilize. So we did that and we put it in the
9 original container that the pressure cooker came in, the box.
10 Now, what we decided to do since we didn't know definitively
11 how the defendant or how one would place this in a restaurant
12 or some other location, we figured the safest thing to do would
13 be to transport it in a safe condition. So all we did was we
14 cut a little slit in the box and we used some of the clear
15 packaging material from the drill bits that we had also
16 purchased, the same drill bit package, and we inserted that
17 through the box and through the back of the clock where the
18 triple A battery was. It essentially just blocked one of the
19 contacts so that the clock wasn't ticking. So we put all that
20 in the box and had the little tab sticking out so you can
21 transport it relatively safely. So then when you pull that tab
22 out, the battery to the clock starts making the clock work and
23 it ticks down. And we had the distance separated only by a
24 fraction of an inch to show that it would still work, but we
25 just wanted to make sure that the video wasn't rolling for 30

1 minutes or an hour, however. You have whatever time you set
2 the clock to be. So we did that and showed the two tests to
3 compare the amount of flame coming out. And again this was not
4 covered. The pressure cooker was simply placed in the box with
5 no lid on to show the amount of flame or energy that's provided
6 by that system.

7 Q. And did you videotape each of those tests?

8 A. Yes.

9 Q. And have you previously seen Government's Exhibit
10 151?

11 A. Yes.

12 Q. And are those your initials on Government's Exhibit
13 151 for identification?

14 A. Yes.

15 Q. Does this CD contain video recordings of both of
16 those tests, the electric match and for the bulb test?

17 A. Yes. It does.

18 Q. Does it contain other items, this CD?

19 A. I'm not sure if it has the other tests that we did on
20 that one. I think it was on a separate CD.

21 Q. Okay. What was the next test that you performed in
22 this case?

23 A. The next test after we did the open top pressure
24 cooker was to build a device again with the components that
25 were essentially submitted with the evidence. There was two

1 pressure cookers. One was an eight quart. One was a 16 quart.
2 We decided to use the 16 quart not for any great specific
3 reason. I think the only reason was that there's a perforated
4 plate that goes in that pressure cooker and there was some
5 burnt material on top of that when we received it. So did that
6 indicate that that one was going to be used? We don't know.
7 We just essentially randomly decided to use the larger one.
8 It really wouldn't make much difference if we used the smaller
9 one. You'd still get a similar effect.

10 We took the pressure cooker. We drilled a hole in it,
11 built the same fusing system but we did not use the fusing
12 system in a real device again because we're not going to set it
13 up that way. That's not the safest thing to do. So what we
14 did is we used an electric match that was initiated with a long
15 wire that went back to a safe area with a commercially
16 available blasting machine. Essentially we're just sending
17 current down that line to the match. We left the fusing system
18 in there because that would have been part of the device and it
19 could have contributed potentially to some additional fragments
20 that may have resulted from the explosion.

21 Q. And can I just stop you there and ask you a question?

22 Is the fusing system you used, is that the same example
23 you told us about earlier where you tested the bulb and then
24 you tested the electric match and they provided the same exact
25 initiation to the powder?

1 A. Yes. It was the same system using that Main Stay
2 brand clock, nine volt battery, some wires and just insert it
3 in the box in the same location.

4 So each powder was poured in individually. We used I
5 forget how many pellets from the same type of shotgun shell.
6 It was a couple thousand I believe. Poured that on the powder,
7 put the perforated plate on top of that, put the lid on, sealed
8 it and put some Gorilla tape on top of that. In the -- the
9 Inspire magazine did not necessarily specify the use of the
10 Gorilla tape in that matter, but it was part of the specimens
11 that were used. It did specify I believe using glue to help
12 seal up things, but rather than wait for the glue to dry,
13 we just used the Gorilla tape. We went back to a safe
14 location -- and back up one other step. We set up a room in an
15 old abandoned prison in Lorton, Virginia. Got the permission
16 from all the county folks to do this and it's used extensively
17 by military and law enforcement for training purposes. They're
18 eventually going to demolish it. So it was in a room that we
19 set up to as best we could a restaurant scenario. We had
20 several folding tables, 3D type wooden dummies which are used
21 by the military for testing purposes. They're articulating
22 wooden dummies with springs and hinges. We set place settings
23 out. We put some pieces of drywall and plywood material on an
24 opposite wall potentially as witness material for whatever may
25 result in the explosion. So that's where we sat it and we

1 decided to put the box with the device on top of one of the
2 tables essentially centrally located.

3 We then went to a safe area, initiated the device. It
4 resulted in an explosion where the lid violently jettisoned
5 from the pressure cooker, essentially buckled, shot into the
6 ceiling and appeared to take a chunk of wood out of one of the
7 beams. And after reviewing the video that we took you can see
8 the pressure cook spinning in air. There's some flame. And
9 then as the remainder of the powder is spinning through the
10 air, the residual frame catches that remainder of powder as
11 it's spinning through the air and creates a large fireball
12 that, you know, could have resulted in injuries to anybody who
13 was in that area. It did not fragment the pressure cooker, the
14 main vessel. Again it just caused the lid to buckle, shoot off
15 violently and through that spinning motion created a large
16 fireball.

17 Q. When you built the replica device did you use sugar?

18 A. No.

19 Q. And was there a reason why you didn't use sugar?

20 A. It wasn't specifically called for in the magazine.

21 It was talking about using the sugar with the match head
22 material and I believe by one quarter percent by weight or
23 volume. Not really necessary to use sugar in that case because
24 the match head material is an explosive, a low explosive in and
25 of itself. Oftentimes sugar is used as a fuel in combination

1 with another oxidizer to create a homemade explosive. In that
2 case it rarely wouldn't have added anything. And it didn't
3 call for it to be used necessarily or specifically with the
4 reference to gun powder or smokeless powder.

5 Q. Was the article when you read it was it specific on
6 how to build the bomb or did it give different options on how
7 to build a bomb?

8 A. There was some specificity with how to construct. It
9 recommended doing some, you know, testing of the circuit to
10 make sure it would work. But there was some -- some room for,
11 you know, making it essentially the same way, but it didn't
12 specify that it had to be to the T an exact way or it wouldn't
13 function. Again you're just building --

14 Q. And looking -- looking -- we're going to put up
15 Government's Exhibit 67 on the screen. If you could take a
16 look at that. Do the photos in the Inspire magazine article,
17 do those photos show a pressure cooker?

18 A. Not in that series of photos.

19 Q. What does that show as using for the bomb?

20 A. It's showing using a pipe elbow with two internal end
21 plugs, the match head material and a Christmas tree bulb.

22 Q. So that's a way of making the bomb within this same
23 article?

24 A. Correct.

25 Q. Now, if one were to make the pipe bomb that's

1 pictured in that picture and someone else were to make the
2 pressure cooker bomb the way you replicated it in your tests,
3 is the pressure cooker more complex than the pipe bomb?

4 A. No. It's essentially the same thing. You're just
5 using a different container for the explosive material.

6 Q. How long generally would someone -- if you could
7 estimate -- would someone without explosives expertise, how
8 long would it take them to put together either of those?

9 A. If they had all the materials present, it shouldn't
10 take any more than a half an hour.

11 Q. Would it take a month to put together the pressure
12 cooker bomb the way it's laid out in the article?

13 A. No. It wouldn't take a month at all.

14 Q. So you told us that when you built this replica bomb
15 it actually detonated and it worked; is that correct?

16 A. It exploded and it functioned as designed.

17 Q. And what is your opinion based on your training and
18 experience as to whether the items found in the defendant's
19 possession together with the Inspire magazine could be used to
20 readily assemble a destructive device or explosive bomb?

21 A. Absolutely. I mean, you have the instructions. You
22 have the materials. It's fairly straightforward.

23 Q. Okay. I'm now going to show you Government's Exhibit
24 151 and 152 for identification. Do you recognize those?

25 A. Yes.

1 Q. And have you initialed both of those?

2 A. Yes. I have.

3 Q. Do these two CDs contain videos that you videotaped
4 as part of your testing?

5 A. Yes.

6 MR. BOYD: Your Honor, I have the same objections that
7 I've previously posed to the Court on both of these videos.

8 THE COURT: That will be overruled. They'll be admitted.
9 (Exhibit(s) admitted: G151, G152)

10 MR. SCHNEIDER: The government moves Government's Exhibit
11 151 and 152 into evidence.

12 THE COURT: It's admitted.

13 MR. SCHNEIDER: And could we start by queueing up
14 Government's Exhibit 151?

15 BY MR. SCHNEIDER:

16 Q. And, Agent Stryker, can you tell us what we're going
17 to see in this clip?

18 A. Again this is the setup that I previously described
19 with the clock, the minute hand as close to the number four
20 where another exposed piece of wire is taped to that position
21 just separated again by roughly a quarter inch. It's going to
22 be less than a minute of time elapse. We're going to
23 essentially put the pressure cooker in the box or the fusing
24 system first, then put the pressure cooker in there, pour the
25 powder on top of the Christmas tree bulb which is taped to the

1 bottom of the pressure cooker and then I'll pull the tab out of
2 the back and we will observe flame generated by the ignition of
3 a smokeless powder, and that's essentially what it depicts.

4 (Video played.)

5 BY THE WITNESS:

6 A. That's the clear tab just keeping one of the contacts
7 of the battery in the back separated and I'm just pushing it
8 through a slit in the box that I had previously made.

9 BY MR. SCHNEIDER:

10 Q. Can you tell us how much powder you're putting in for
11 the test in this test that we're seeing?

12 A. Just a couple of ounces. I believe it was
13 approximately three ounces of powder.

14 Q. And how does that compare to what you used when you
15 replicate the device later on?

16 A. When we replicated the device we used all the powder.
17 So we used six pounds versus three ounces.

18 Q. And in this example, this video and the subsequent
19 videos where you actually replicate the device, in each case
20 are you converting the pressure cooker into a destructive
21 device?

22 A. Yes.

23 I'm going to pull the tab. The battery's now connected to
24 the clock and the minute arm of the clock will start timing
25 down.

1 Q. And this video is to demonstrate how the bulb would
2 react to the powder?

3 A. Right. How the bulb would effectively cause the
4 powder to ignite.

5 Q. And what is the next video clip that we're going to
6 see?

7 A. Next video is the same setup, but instead of using a
8 Christmas tree bulb we used an electric match which is what we
9 used in the final demonstration to show that there's no
10 difference in the amount of energy imparted to that system.

11 Q. And that was done strictly for safety reasons?

12 A. Yes.

13 (Video played.)

14 BY MR. SCHNEIDER:

15 Q. And in your expert opinion when you tested both of
16 those methods were you able to discern any difference between
17 the way the powder reacted?

18 A. There is no discernible difference.

19 Q. Now, is this the actual explosion?

20 A. Yes. This is the setup where we had the wooden
21 dummies. You can see the box in the center with the pressure
22 cooker in there. The lid is secured. The vent's been plugged
23 up but we're initiating it remotely.

24 Q. And is the next clip going to be the same explosion
25 but from a different angle?

1 A. Yes.

2 (Video played.)

3 BY MR. SCHNEIDER:

4 Q. And now we're going to look at the last video. Were
5 there multiple cameras and camera angles for these videos?

6 A. Yes.

7 Q. And was there also different speeds on the cameras?

8 A. Yes. And this last one shows a high speed
9 perspective to really slow it down to show what's going on.

10 (Video played.)

11 MR. SCHNEIDER: Pass the witness, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BOYD:

14 Q. With regards to the article out of Inspire magazine,
15 it is fair to say that you did not construct the device that
16 you constructed exactly to the recipe contained in that
17 article?

18 A. It was essentially the same but it wasn't exact.

19 Q. So it's a fair representation that you did not
20 construct an exact device based on the recipe from the article?

21 A. The article specified the use of a nail for one of
22 the contact points. We didn't use a nail. Number one, it's
23 not needed. Number two, there were no nails used or submitted
24 as evidence although --

25 MR. BOYD: I'm going to object as nonresponsive.

1 THE COURT: Overruled.

2 BY THE WITNESS:

3 A. The -- you could have used one of the drill bits if
4 your desire was to use a nail, but the purpose of using a nail
5 was just to provide a contact point where the wire would be
6 attached to. We simply used a bare end of a wire taped over
7 the clock. It serves the same purpose.

8 BY MR. BOYD:

9 Q. How long have you been doing this?

10 A. Doing what?

11 Q. What you do.

12 A. I've been an examiner for about nine years.

13 Q. It would be fair to say that you have a great deal of
14 knowledge in this area, right?

15 A. Yes.

16 Q. You've probably forgotten more knowledge than most
17 people ever acquire; isn't that true?

18 A. I don't know really know how to answer that. I
19 mean...

20 Q. With respect to your characterization of this device,
21 you view this as a relatively simple device. That's fair to
22 say, correct?

23 A. Yes.

24 Q. And you just testified under oath that you felt it
25 would take about 30 minutes to assemble this device, correct?

1 A. That's correct.

2 Q. But it took you much longer as you were preparing
3 everything, didn't it?

4 A. No. I wouldn't say that it took longer.

5 Q. Well, I mean, just the test that we just watched,
6 just the lead in took about five minutes. Would you agree with
7 that?

8 A. The lead in for which video?

9 Q. The first two. Those are about five minutes in
10 length total.

11 A. For each video?

12 Q. No. No. No.

13 A. That could be.

14 Q. Not for each video. Total?

15 A. I didn't measure the time.

16 Q. So you didn't measure the time?

17 A. Not for the videos. No.

18 Q. And you didn't measure the time how long it took you
19 to the build the device either, did you?

20 A. I did not.

21 Q. And so you're guessing when you're telling everyone
22 that it would take about 30 minutes?

23 A. I'm not guessing. I'm using my experience on
24 approximately what I think it would take to build it. Could
25 you build it less than a half hour? You could. Could it take

1 a little bit longer than a half hour? That's possible, too.

2 Q. And the other thing about building a device is that
3 you have to have all the components, don't you?

4 A. Yes.

5 Q. And as you just stated, you didn't have all the
6 components listed in the article, did you?

7 A. We had all the components to build a device. We
8 didn't have a nail.

9 Q. Okay, sir. And that nail is an item that is listed
10 in the article, isn't it?

11 A. It is. But there's also differences in what he had.

12 Q. So there's more differences in what we had and what
13 y'all built?

14 A. We used what was provided. We used the items that
15 were submitted as evidence. We used the same items purchased
16 separately to construct our device.

17 Q. But you didn't, did you? You didn't use every item
18 that was present, did you?

19 A. We didn't use every item and it wasn't called for in
20 the article.

21 Q. And the purpose that you had in creating this
22 pyrotechnic display for the jury was precisely that. You were
23 going to create a video to show to a jury; isn't that correct?

24 MR. SCHNEIDER: Objection as to his intent to show it to a
25 jury.

1 THE COURT: Sustained.

2 BY MR. BOYD:

3 Q. Who had you construct this device?

4 A. It was constructed in consultation with the -- the
5 field -- FBI field office as well as the assistant U.S.
6 Attorneys.

7 Q. And when you're constructing devices like these, I
8 noticed in the video you were pointing. You clearly
9 constructed this as to provide demonstration.

10 A. That's correct. It was for demonstrative purposes.

11 Q. And you knew you would likely be testifying?

12 A. I knew there was that possibility. Yes.

13 Q. How long did it take the glue to dry?

14 A. I don't recall.

15 Q. Well, doesn't that enter into the time it takes to
16 build the device?

17 A. It could if you want the glue to completely dry.

18 Q. And so when you built the device and you -- one of
19 the parts of the device was adding BBs?

20 A. Correct.

21 Q. And making sure those BBs remained in place?

22 A. We poured the shotgun pellets on top of the powder.

23 Q. But that's not what the instructions required, was
24 it?

25 A. The instructions were essentially all over the place

1 with the placement of fragmentation. In one case it talks
2 about gluing nails in a glue matrix kind of having this rubber
3 sheet of glue and nails and putting on the outside of a
4 container. Then it talks about gluing them to the inside of a
5 container. And the placement of it is really not going to --
6 in this case going to give you any great difference on
7 fragmentation and that's not what you saw in the demonstration
8 as well.

9 Q. Well, let's talk about the gluing for a second. You
10 decided arbitrarily to use the 16 quart; is that correct?

11 A. Essentially.

12 Q. And is this the 16 quart?

13 A. Yes.

14 Q. Okay. Now, if you're going to glue the BBs to the
15 outside, right?

16 A. You're pointing to the inside?

17 Q. To the side wall. If you're going to do that, you're
18 going to have to pretty much leave it on its side, pour in some
19 BBs and glue it, correct?

20 A. Not necessarily. You could coat the inside, pour the
21 BBs in there, roll it around, let them stick to the glue. Some
22 of them may fall off. It depends on how pretty you want to
23 make it look I guess.

24 Q. But you didn't use the glue in any of the tests that
25 you did, did you?

1 A. We used some of the glue to essentially clog up some
2 of the fittings on the lid.

3 Q. But you didn't use it to put in place any BBs, did
4 you?

5 A. No. We didn't.

6 Q. Because that would take time, wouldn't it?

7 A. I actually didn't exclude the glue for that reason.

8 Q. And the real reason that time is such an important
9 factor is what you first testified to. You wanted to be able
10 to testify to this thing was -- let me get it as you quoted --
11 readily able to be assembled into a destructive device, right?

12 A. Correct.

13 Q. And that's the reason you left out the glue because
14 if the time was longer, then it's not readily assembleable?

15 A. That's absolutely not true.

16 Q. Well, let's continue through my example then.

17 MR. BOYD: Your Honor, may I approach the witness?

18 THE COURT: Yes, sir.

19 BY MR. BOYD:

20 Q. With respect to letting the glue dry over one
21 iteration, one period of time, does that indicate to allow the
22 glue to dry 15 to 20 minutes on each surface?

23 A. I think this is talking about using the glue on two
24 surfaces that you're going to stick together. In this case it
25 really doesn't apply since you're just talking about putting

1 BBs on one surface. On Step 5 it says allow both surfaces to
2 dry 15 to 20 minutes depending on temperature and humidity. If
3 surfaces are not assembled within two hours, adhesive can be
4 reactivated by applying an additional coat of gel original
5 contact cement.

6 Q. So certainly you would agree with me that a BB has a
7 surface?

8 A. Yes.

9 Q. And this pot has a surface?

10 A. That's correct.

11 Q. So to attach a BB to this pot, according to these
12 instructions, these instructions say wait 15 to 20 minutes,
13 right?

14 A. That's what the instructions say. Yes.

15 Q. And if you're going to do that all the way around,
16 it'll either take one, two, three, four iterations at 15 to 20
17 minutes each assuming a good outcome or it will take maybe less
18 time if you only did two iterations and did half of it at a
19 time? About half that time? 20 to 40 minutes?

20 A. If you were going to take an individual pellet and
21 glue that pellet and stick it to a glued surface, it would take
22 much longer.

23 Q. Okay. And you'd also have to use the brush as well
24 to get the glue applied to start with, right?

25 A. You wouldn't necessarily have to, but it would make

1 it easier to apply the cement.

2 Q. And y'all didn't do that?

3 A. We did not.

4 Q. Now, with respect to the Inspire magazine article --

5 MR. BOYD: Could you bring up Exhibit No. 67, please?

6 BY MR. BOYD:

7 Q. Now, this is the section in the Inspire magazine
8 article that talks about the substances used to create what is
9 referred to in the article as an inflammable substance,
10 correct?

11 A. Yes.

12 Q. And as you noted, there's a difference between match
13 heads and sugar, right?

14 A. Yes.

15 Q. Match heads don't have an oxidizer associated with
16 them, do they?

17 A. Yes. They do.

18 Q. They do? Why would the sugar be added to the match
19 heads in these cases?

20 A. I don't really know why they specified that.

21 Q. Well, you really do. It's because it serves as an
22 oxygen source. It serves as a fuel source for when the match
23 heads start to burn, right?

24 A. No.

25 Q. Okay. So what is the purpose of an oxidizer?

1 A. Purpose of an oxidizer is -- in an explosive
2 formulation is to provide the source of oxygen to combine with
3 a fuel in a match head mixture those two substances, the fuel
4 and the oxidizer, they're already present which is why when you
5 strike it to a friction surface you create heat through
6 friction and it combusts. So all fuel and -- or all explosive
7 mixtures are some balance of fuel and an oxidizer. In this
8 case sugar is a fuel. Sugar is often used as a source of fuel
9 for homemade explosive mixtures but in this it's not necessary
10 because you already have a match head composition mixture. It
11 really serves not to add to the explosive capability of it.
12 Would the sugar burn in that mixture? It would burn. You'd
13 get caramelized sugar essentially, but it's not really adding
14 to it because you don't need it.

15 Q. Did you test that --

16 A. I did not test that mixture.

17 Q. But you certainly had the ability to?

18 A. We could have tested it if we needed to.

19 Q. Or if you even wanted to, right?

20 A. If I wanted to, I could have. Yes.

21 Q. Okay. Now, in regards to the pressure cooker that's
22 listed in the article, it says to then fill the cooker with the
23 inflammable material, correct?

24 A. It says to fill in.

25 Q. It says then fill in the cooker with the inflammable

1 material, correct?

2 A. Yes.

3 Q. And when you created the device that you created, you
4 didn't fill in the pressure cooker with inflammable material.
5 There was still space left, wasn't there?

6 A. There was space left. Again if you read --

7 Q. Because -- because the six pounds of material isn't
8 enough to construct the device that is listed and provided for
9 in this article; isn't that correct?

10 A. No. That's not correct.

11 Q. And that's because you want to offer a different
12 definition of fill in?

13 A. Not necessarily.

14 Q. You -- this is a device that requires pressure,
15 right?

16 A. Yes.

17 Q. And, hence, that's why a pressure cooker or a pipe is
18 suggested, correct?

19 A. Yes.

20 Q. And a layperson using this would fill up the device,
21 wouldn't they?

22 MR. SCHNEIDER: Objection as to what a layperson would do,
23 Your Honor.

24 THE COURT: Sustained.

25 BY MR. BOYD:

1 Q. You never tested this device all the way filled up,
2 did you?

3 A. No.

4 Q. You never tested this device using the sugar, did
5 you?

6 A. No. We didn't use sugar.

7 Q. And that sugar is also a filler, isn't it?

8 A. It's --

9 Q. Takes up space?

10 A. Sure. Yes. It would take up space.

11 Q. So it's a filler?

12 A. It would help fill up the void in whatever container
13 it's put in. Yes.

14 Q. Okay. And with respect to creating an accurate
15 result to show this jury, it would have been prudent to
16 construct the device according more closely with this article?

17 A. This article specifies specifically with the use of a
18 pressure cooker that it essentially would take a heck of a lot
19 of matches to do so. So perhaps a better alternative would be
20 to use gun powder. When it suggests the use of gun powder, it
21 does not add or say anything about, oh, don't forget the sugar.

22 Q. It also doesn't say, oh, you don't need to add the
23 sugar though, does it?

24 A. It doesn't say that you have to add the sugar, but
25 when you're using gun powder or smokeless powder, it's common

1 sense that you don't need to add anything. When people reload
2 with smokeless powder, they put the smokeless powder in the
3 cartridge casing. They don't add a pinch of this or a dash of
4 that. They just put the smokeless powder in there. I think
5 everyone knows that it is an explosive, a low explosive that
6 burns rapidly.

7 Q. So if you view it as common sense that you don't need
8 to add sugar because somehow gun powder is different than match
9 heads, then why earlier did you indicate that match heads just
10 didn't need the sugar?

11 A. Because they don't. The article, you know, talks
12 about the sugar.

13 Q. Well, then along those same lines, the gun powder
14 wouldn't need the sugar, right?

15 A. Correct. Neither --

16 Q. But --

17 A. -- match head or --

18 Q. -- you just stated that it's common sense you don't
19 need to add anything and that's because if you add sugar to the
20 gun powder, you're potentially creating an inert device, right?

21 A. I would say with the amount of sugar that was
22 specified which was approximately a quarter by volume or
23 weight -- I don't remember which -- it would not be sufficient
24 to dilute the smokeless powder to a point where it wouldn't
25 ignite.

1 Q. But you didn't use the amount of stuff specified
2 throughout your construction of the device. So you want to
3 assume that someone who created a device that never made it
4 into existence would not just fill up the rest with all of the
5 sugar. That's what you want to assume, right?

6 A. Again the article didn't specify the use of sugar.

7 Q. If I added this much sugar to this much gun powder,
8 it's going to affect it, isn't it?

9 A. It could have an effect if you add that much sugar.

10 Q. And it's going to have an adverse effect, isn't it?

11 A. It potentially could if you added that much sugar to
12 six pounds, but again I don't know.

13 Q. And so if you had tested everything you received in
14 trying to fill up this void of space so as to create a pressure
15 device, you can't tell this jury what would have happened?

16 MR. SCHNEIDER: Objection, Your Honor. He's already asked
17 the witness about the sugar and how he tested the device.

18 BY MR. BOYD:

19 Q. Hypothetically can you explain what would happen if
20 you had tested the device?

21 MR. SCHNEIDER: Same objection, Your Honor.

22 THE COURT: He hasn't asked a question yet I don't think.
23 Was that a question, Mr. Boyd?

24 MR. BOYD: Your Honor, I was going to go along the same
25 lines.

1 THE COURT: Well, then the same objection would apply. It
2 will be sustained.

3 MR. SCHNEIDER: Yes, Your Honor.

4 BY MR. BOYD:

5 Q. Let's talk about this electric match. It's your
6 testimony that the reason for using an electric match is
7 safety, right?

8 A. Yes.

9 Q. I want to think through that with you for a second.
10 You said that you remotely detonated the device that you showed
11 the jury, right?

12 A. Yes.

13 Q. Which means the ignition source at the device won't
14 get a charge or an electric load until whoever is at that
15 remote location initiates it, correct?

16 A. That's correct.

17 Q. And with regards to using the Christmas tree light
18 bulb, there is no different safety involved in the placement of
19 that Christmas tree light bulb and applying a load to that as
20 opposed to a load from afar to the electric match except for it
21 would be inconvenient for you to have to reproduce a video
22 should that filament fail, right?

23 A. No. The safety issue that essentially comes into
24 play is safety/reliability. Again the filament is relatively
25 delicate. So if we were to get a misfire if we tried to

1 initiate the device remotely and it failed to function, then we
2 have to reapproach this device. We have to wait awhile and
3 reapproach it and it's never a fun thing to go back down on a
4 device that should have functioned and then to try to figure
5 out why because you have to disassemble it and there's a degree
6 of risk that's involved with doing that. So we want to ensure
7 that it's reliable by using an electric match. And again we
8 demonstrated that a match essentially does the same thing as a
9 Christmas tree bulb with igniting that powder. So it was a
10 matter of safety. Not convenience.

11 Q. But you didn't use -- well, it's also a matter of
12 convenience?

13 MR. SCHNEIDER: Objection, Your Honor. He's just answered
14 the question.

15 THE COURT: Sustained. You're arguing with the witness,
16 Mr. Boyd.

17 MR. BOYD: Yes, Your Honor.

18 BY MR. BOYD:

19 Q. Let's go to the bulb right quick. You never tested
20 these bulbs, did you? You tested it to see if it would work,
21 but you didn't use any of these bulbs in the test, right?

22 A. That's correct.

23 Q. But you were able to clip a bulb out, make sure it
24 lit up and use the bulb for that. Why didn't you go ahead and
25 use a bulb to test your device?

1 A. There was a decision made early on that we weren't
2 going to consume any of the evidence in the construction of the
3 device. We were going to buy similar or like components. So
4 the bulb from that is -- functions the same way that any
5 Christmas tree bulb does of that size and manufacturer of bulb.

6 Q. Did the same person manufacture the bulb that you
7 used?

8 A. I don't know.

9 Q. Was the filament made out of the same material in the
10 bulb that you used versus -- that is contained in that exhibit?

11 A. They were visually consistent with one another except
12 for the color of the bulb.

13 Q. Did you test the metal?

14 A. Did not test the metal.

15 Q. Did you test the filament?

16 A. No.

17 Q. So you do not know?

18 A. I don't know if they were made by the same person in
19 the same plant in China on -- I don't know. But we didn't do
20 any forensic testing of the filament of the bulb or the glass
21 or the plastic to say that they're some sort of exact match.
22 They're Christmas tree bulbs.

23 Q. You used your expertise to create the biggest
24 pyrotechnic display that you could create to demonstrate to
25 this jury what you wanted to happen, didn't you?

1 A. No. We used the materials that were provided to
2 construct a device to best represent the materials that were
3 seized during the search.

4 Q. And lastly there was no nail ever recovered from the
5 scene, was there?

6 A. There was no nail submitted as evidence. I don't
7 know what was or wasn't at the scene when the search occurred.

8 Q. There was no nail submitted to you, was there?

9 A. No.

10 Q. And clearly a nail is called for in the ignition
11 device for the device built according to the article, isn't
12 there?

13 A. There's a nail called for but not necessary.

14 Q. And that's because you determined it not to be
15 necessary, right?

16 A. The reason that we didn't use a nail was in the clock
17 that is depicted in the magazine -- I received a black and
18 white copy of the magazine article. When it shows that clock,
19 there's circles around where that nail is. To me that looked
20 like a hole was drilled in what -- I don't know what kind of
21 clock they used in this magazine, whether it was a plastic
22 face. I assumed it was a plastic face where you could drill a
23 hole through the plastic face. The clocks that we received had
24 glass faces. And although you could drill through glass, we
25 didn't receive any glass drill bit or ceramic bit. So we

1 simply removed the face of that clock that piece of glass and
2 again could I have put a nail after that point? Yeah, but they
3 showed it to me which looked like a hole through the plastic.
4 So I just simply put a piece of wire at the contact point that
5 I desired and taped it to the clock. It's the functional
6 equivalent of having a nail with a piece of wire twisted to it
7 at whatever point you would desire that to make contact with
8 the other arm of the clock.

9 Q. And so you used your expert experience to get around
10 a fundamental problem that you identified with the items you
11 were presented, right?

12 A. My expertise didn't necessarily come into play here.
13 It's common sense.

14 Q. And you're taking into account that it is your
15 opinion that everyone would have this common sense?

16 A. I would think that most people to construct a device
17 with the instructions provided and the material present.
18 Could everyone on the globe do it? Probably be some people
19 that would fail in an attempt, but the vast majority of people
20 without any, you know, disability I suppose would be able to do
21 that.

22 Q. My point is, sir, you have said common sense
23 repeatedly. You have said common sense in regard to using gun
24 powder and that people have this common sense in regards to how
25 to use gun powder and you're necessarily speculating as to

1 whoever has that article that they have common sense in regards
2 to gun powder, aren't you?

3 A. I would think so. If somebody -- somebody has this
4 article and their desire is to build a bomb, I would think that
5 they're probably going to have some additional common sense
6 that maybe a layperson or other person doesn't. I think with
7 all instructions that you received there's a certain amount of
8 applied common sense that one ought to have before they read
9 the instructions, and I don't think there's a lot of it
10 required to follow these instructions.

11 Q. But you yourself didn't follow them completely, did
12 you?

13 A. We followed them again to make the functional
14 equivalent.

15 MR. BOYD: Nothing further.

16 MR. SCHNEIDER: Your Honor, I just have about three or
17 four questions.

18 REDIRECT EXAMINATION

19 BY MR. SCHNEIDER:

20 Q. Agent Stryker, when you give your expert opinion as
21 to whether the items that you received can be readily assembled
22 into a destructive device, when you look at the term "readily
23 assemble," does it matter whether it can be readily assembled
24 in under seven minutes or from seven to ten minutes or in 20
25 minutes or where those items --

1 MR. BOYD: Your Honor, I'm going to object. Calls for a
2 legal conclusion.

3 THE COURT: I'm sorry?

4 MR. BOYD: Your Honor, I'm going to object. That calls
5 for a legal conclusion.

6 THE COURT: Overruled.

7 BY THE WITNESS:

8 A. There's no time period that's specified for what can
9 be readily assembled. If you have the instructions, the
10 materials and that's a simple thing to build, it's readily
11 assembled.

12 BY MR. SCHNEIDER:

13 Q. And going back to the Inspire article that gives the
14 instructions on how to build this device, is it fair to say
15 that that article is like a recipe for baking a cake in that
16 there are different ways in a recipe? You might use chocolate
17 frosting. You might use vanilla frosting. Is that a fair
18 comparison to the way this article read and the way you read
19 it?

20 A. Yes. It doesn't have to be followed exactly to build
21 a device. There can be some slight variances in how one does
22 things. It doesn't specify, you know, the length of the wire
23 or other things. So common sense plays into it, but it's --
24 you know, you could vary some things and still get it to work.

25 MR. SCHNEIDER: Nothing further, Your Honor.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

Q. In regards to the slight variances you just talked about, slight variances can make a big difference, can't they?

Q. For instance, connecting the ignitor to the top as indicated in the article versus connecting it to the bottom would have different outcomes, wouldn't it?

Q. And that's especially important in this case because you chose to connect it at the bottom, right?

Q. And the original instructions had it coming in from the top, right?

Q. With respect to that, the place you placed it has a tendency actually to create the effect of a chafe charge,

1 doesn't it?

2 A. No.

3 Q. And that's what you see in the video. You actually
4 see a lid fly off and bend because the shards are coming up and
5 out because you've placed it at the bottom instead of placing
6 it at the top which would have a different effect as it
7 deflagrated, wouldn't it?

8 A. Absolutely not.

9 MR. BOYD: Nothing further.

10 MR. SCHNEIDER: Nothing further, Your Honor.

11 May this witness be excused?

12 THE COURT: Yes, sir.

13 You may step down. You may be excused.

14 MR. FRAZIER: May we have just a brief moment, Your Honor?

15 (Conference between government counsel.)

16 MR. FRAZIER: The United States rests, Your Honor.

17 THE COURT: Members of the jury, at this point in every
18 trial there are legal matters that I need to take up. So I'm
19 going to ask you to retire to the jury room and it's about time
20 for the morning recess anyway.

21 LAW CLERK: All rise.

22 (Jury exited the courtroom at 10:17.)

23 THE COURT: Be seated, everyone.

24 Mr. Boyd, I'm assuming you have legal matters you wish to
25 present?

1 MR. BOYD: Yes, Your Honor. I do.

2 Your Honor, the first legal matter I'd like to take up is
3 I'd like to make an offer of proof in regards to what the
4 testimony of Ms. Matrono would have been -- Ms. Catherine
5 Matrono would have been had I been able to have her as a
6 witness. Specifically I would ask the Court to enter as
7 Court's No. 1 the conscientious objector packet that she
8 reviewed in arriving at her decision to grant conscientious
9 objector status to Mr. Abdo. I would further offer to the
10 Court that she would testify that after reviewing the entire
11 process that Mr. Abdo went through that, number one, initially
12 there was a delay in processing his conscientious objector
13 packet. Number two, once the process began, there was an
14 investigating officer appointed who approved initially that
15 conscientious objector status be granted. Subsequent to that
16 there are a series of two board processes that occurred and
17 both of the resulting board processes recommended disapproval
18 of the conscientious objector packet. And then ultimately it
19 went to Ms. Matrono who as the approval authority and signature
20 authority for the Department of the Army in regards to ultimate
21 approval of the conscientious objector packet reviewed the
22 packet and determined that conscientious objector status should
23 be granted. This goes to the theory of the defense that we are
24 unable to put on at this time because we were unable to have
25 Ms. Matrono served by the U.S. Marshals as the Court views this

1 as irrelevant. I would ask at this time for the Court to allow
2 me to have the opportunity to get Ms. Matrino available to the
3 Court so that I can offer this in defense. That may require a
4 recess in this proceeding so that I can get her and try to get
5 her by VTC.

6 THE COURT: You're offering this as a bill of exception, I
7 assume?

8 MR. BOYD: Yes, Your Honor. Bill of exception and offer
9 of proof.

10 THE COURT: It will be admitted as a bill of exception.

11 MR. BOYD: And with respect to --

12 THE COURT: Your other request of course will be denied.

13 MR. BOYD: Thank you, Your Honor.

14 The second bill of exception offer of proof that I have is
15 in regards to the testimony that would have been provided by
16 Lieutenant Colonel Bavornack. He is one of the staff judge
17 advocates in the Army. Specifically he is the staff judge
18 advocate for the Fort Campbell 101st Airborne Division. He
19 would be providing testimony that the child pornography charges
20 that were charged against Mr. Abdo were determined by him as
21 opined by him in September of 2011 to be without probable
22 cause. This also goes to the theory of defense that I am
23 unable to put on with regards to the effect of undergoing a
24 month long investigation for child pornography by my client
25 that he always maintained was without merit and ultimately

1 proved to be without probable cause. The reason that I am
2 unable to call him as a witness is because we had requested
3 again that he be served by the U.S. Marshals. This Court
4 determined his testimony to be irrelevant. I would ask that
5 this be noted in the record and secondly I would ask that I be
6 given time to get Lieutenant Colonel Bavornack before the jury
7 in some form or capacity, even by VTC, such that I can present
8 this to the jury in defense of my client.

9 THE COURT: You've demonstrated quite well that that would
10 be irrelevant. So that will be denied.

11 MR. BOYD: Your Honor, the third offer of proof I have is
12 in regards to the defense expert Mr. Ludwizack. Specifically I
13 have previously provided -- and if I can grab my computer, I'll
14 grab it right quick.

15 Specifically I have provided the Court in my second sealed
16 ex parte motion for more funding for the previously appointed
17 expert witness with 24 points which I believe would be of
18 assistance to the jury which I believe are necessary in
19 providing Mr. Abdo with the defense that cover the fact that
20 Mr. Ludwizack would indeed if placed under oath and if asked
21 questions opine that the FBI constructed a device that the
22 FBI's creation simply did not exist.

23 Number two, that allowing to view the video of the
24 deflagration resulting from the device built by the FBI even as
25 a demonstrative aid would mislead the jury precisely because

1 there was no device built by Mr. Abdo.

2 Number three, that allowing the jury to view the video of
3 the deflagration resulting from the device built by the FBI
4 even as a demonstrative aid would mislead the jury because the
5 FBI only built one device and not two, thereby creating a
6 result that even more enhanced than it should have been
7 especially considering that the FBI built a device based on its
8 own explosives expertise as opposed to building its device
9 based solely on the information contained in the article which
10 was available to Mr. Abdo.

11 Number four, that allowing the jury to view the video of
12 the deflagration resulting from the device built by the FBI
13 even as a demonstrative aid would mislead the jury because the
14 FBI's device was assembled based upon the FBI's expert
15 experience and not solely on the information contained in the
16 article available to Mr. Abdo.

17 Number five, the FBI used its vast expertise in building
18 its device and that level of expertise simply would not be
19 available to Mr. Abdo even if he had built a device.

20 Number six, the effect of the FBI's expertise was the
21 ability to construct a device that worked to any degree at all,
22 as the FBI's device simply was not based solely on the article
23 available to Mr. Abdo.

24 Number Seven, the FBI's device did not explode.

25 Number eight, the FBI's device experienced what is

1 referred to as a deflagration which in laymen's terms is
2 essentially a pyrotechnic display of burning powder as opposed
3 to an explosion.

4 Number nine, the FBI's knowledge concerning the necessity
5 of sealing the holes on the FBI's device and how to properly
6 seal the holes on the FBI's device are key factors in creating
7 a device that worked to any degree at all by using only the
8 materials available. Such knowledge is possessed by explosives
9 experts and is not knowledge that would be possessed by Mr.
10 Abdo.

11 Number 10, an expert would show the extremely difficult --
12 the extreme difficulty in achieving an explosion by building a
13 device using only the materials available and based only on the
14 article.

15 Number 11, the FBI's knowledge as to where and how to
16 place the ignition source is a key factor that would require
17 expert knowledge not possessed by Mr. Abdo.

18 Number 12, the FBI's placement of the ignition source in
19 their device on the bottom could create a shape charge effect,
20 thereby enhancing and increasing the effects of the device
21 built by the FBI. (The shape charge effect in all
22 likelihood --

23 THE COURT: What are you reading, Counsel?

24 MR. BOYD: Your Honor, I'm reading the findings that my
25 expert would testify to.

1 THE COURT: Do you have that in writing so you can just
2 present it without having to stand up there and read all of
3 that nonsense?

4 MR. BOYD: Your Honor, if the Court will take the 24 items
5 that I have included in my previously filed second motion for
6 expert funds and include that as part of the record.

7 THE COURT: It is for the record, is it not?

8 MR. BOYD: Yes, Your Honor. But for clarity's sake what
9 I'm referring to is Pages 4, 5, 6 and 17 of that ex parte
10 sealed motion that I filed. And if that suffices for the
11 Court's purposes, I am referring to Items 1 through 24
12 representing to the Court that those items 1 through 24 are
13 items which my expert would testify to as an expert under oath
14 before this Court in assisting the defense.

15 Furthermore, not in conjunction to these 24 --

16 THE COURT: Rather -- just -- I think it'd be quicker for
17 you to just go ahead and read what you were reading, Mr. Boyd.
18 Forget my suggestion that you submit it in writing. Just go
19 ahead and read it.

20 MR. BOYD: Your Honor, I'll go back to the shape charge
21 effect in all likelihood caused the gun powder to be expelled
22 from the container when the seal of the pressure cooker was
23 broken such that the powder burned as it caught fire, thereby
24 creating a deflagration rather than explosion.

25 Thirteen, the FBI spent tens of thousands dollars if not

1 \$100,000 and numerous hours preparing, planning, building and
2 testing their device.

3 Number 14, the effect of the FBI's expertise was to create
4 a device from available materials as opposed to all materials
5 that would cause as much damage as possible based upon the
6 FBI's expert knowledge of explosive devices as opposed to being
7 based solely on the article available to Mr. Abdo.

8 Number 15, the FBI utilized some but not all components
9 purportedly available to Mr. Abdo in building its device.

10 Number 16, if the FBI had used all of the components
11 available to Mr. Abdo and followed the article that the
12 government claims as being used by Mr. Abdo, the result would
13 have been a nonfunctioning device.

14 Number 17, the design in the article was so sophomoric
15 that it is highly questionable whether anyone could put
16 together any device based entirely on the article that would
17 detonate and explode.

18 Number 18, considering all of the items the FBI had
19 located in the hotel taken in their then current state, the
20 items did not form or begin to form an explosive device or
21 weapon of mass destruction.

22 Number 19, the FBI clearly did not use the sugar in the
23 construction of the FBI's device, as doing so would have caused
24 the FBI's device to completely fail to function.

25 Number 20, the sugar would traditionally serve as an

1 oxidizer but based on the alleged components supposedly found
2 in the hotel room, adding such an oxidizer to the particular
3 type of powder alledgedly found in the hotel room would not
4 result in the creation of an explosive device.

5 Number 21, the FBI only built one device, not two as the
6 government claims Mr. Abdo was attempting to build.

7 Number 22, attempting to build two devices from all
8 materials recovered in the hotel room would have met with even
9 less of a pyrotechnic display than the one device which was
10 built to the best of the FBI's ability.

11 Number 23, taking apart Christmas tree lights by a novice
12 for the purpose of creating an ignition source is very tedious
13 and the methodology required in taking apart a Christmas tree
14 light by a novice is likely to result in a torn or damaged
15 filament which would in turn make any device requiring such an
16 ignition source inoperable.

17 Number 24, based on observations concerning the clock,
18 nail, wire, electrical system and the conductivity of the
19 clock, nail, wire system it is doubtful that a non expert could
20 get the clock, nail, wire system to work due to the material
21 the clock arms are made of or due to a combination of the
22 materials the clock arms are made of and coatings on those
23 clock arms and the device, had it worked at all, would most
24 likely have resulted in a flash fire with a bright flame, heat
25 and no serious bodily injuries or deaths.

1 This, Your Honor, concludes my offer in respect to what my
2 expert would have testified to. Furthermore, he would have
3 been able to assist me in court in providing a better
4 cross-examination of Mr. Stryker and of the previous witness
5 that was rendered by the government in regards to explosives
6 expertise. I just ask that that be taken into consideration
7 and I further ask that I have the ability to have more funds
8 and to contact my expert so that I can put him on in front of
9 this jury in some form of or fashion so as to provide my client
10 with that defense.

11 THE COURT: Does the government wish to respond in any
12 way?

13 MR. FRAZIER: Well, just briefly, Your Honor. First of
14 all, most of the points that he made would be legal
15 determinations that the Court would have to make as to whether
16 the evidence would qualify as being probative or a waste of
17 time or unduly prejudicial or misrepresenting something to the
18 jury. But in addition to that, Your Honor, because this was
19 all filed ex parte, we've not seen the motion. We're not aware
20 of it. But I am aware of the fact that a report was submitted
21 by Mr. Stryker that this Court did provide defense counsel
22 funds for an expert. The report of Mr. Stryker was 12 pages
23 long. 12 pages. That was it, five of which were just
24 basically a detail, a list of the items he received in the lab.
25 It was a very short report. It was specific and to the point.

1 We made the videos available to defense counsel which I'm
2 assuming he made available to his expert. The -- oh, and the
3 prior defense counsel was actually in attendance at the test
4 and was given the opportunity to ask questions, to give input,
5 to -- and to bring his own expert if he so choose which took
6 place in December of last year. And finally Mr. Dorsett -- I
7 mean -- excuse me -- Mr. Boyd has had the opportunity to
8 essentially cross-examine Mr. Stryker on all of the points that
9 he's raised that his expert would provide for him. He did it
10 here in court today asking those very questions.

11 Our position is, Your Honor, that -- as far as the record
12 is concerned that -- as far as the record is concerned
13 regarding this particular expert that no showing -- a
14 substantial showing has been made that any of these matters
15 that he raises that the expert would say would even be -- would
16 even be admissible by the Court because they go essentially to
17 the legal determinations and essentially wouldn't have any
18 effect on whether the definition that's used under 921 that the
19 items he had -- the items Mr. Abdo had in the hotel room were a
20 destructive device because by definition any combination
21 which -- from which a destructive device may be readily
22 assembled is sufficient under the law to be a destructive
23 device. So it wouldn't change the matter, wouldn't change the
24 fact that even if they built the items and put everything in it
25 that Mr. Boyd was suggesting should be done wouldn't change

1 anything. If the clock wires connected and nothing happened,
2 there was still an attempt. And so our position would be that
3 it would not be relevant and that's all we have.

4 THE COURT: Well, for the record I recall that the main
5 problem with this was this witness lived somewhere in the
6 Midwest and the expense -- his fees were astronomical and Mr.
7 Boyd was given -- was told he could hire an expert but not at
8 the expense this particular individual was willing to charge or
9 demanding.

10 Anything further in the way of bill of exception you wish
11 to present?

12 MR. BOYD: Your Honor, I'd just like to remind the Court
13 that previously when I first asked for this expert the Court
14 granted me this expert and the Court said I could use him in a
15 consulting and testifying capacity. Then the Court provided at
16 the first instance \$1,000. Second to that after we had
17 expended those funds and I had gotten the expert to continue to
18 assist me even over those funds, I approached the Court again
19 and asked for more funds and highlighted the costs associated
20 with that. At that time the Court gave me an additional \$2,500
21 which essentially went to cover the work that he had performed
22 for me in good faith in regards to providing Mr. Abdo a
23 defense. Then I came back to the Court a third time and I
24 asked for more funds just so I could have him testify, not so
25 that I can have him perform any more work and I presented the

1 Court with three different options in regards to trying to
2 control the cost because I am aware that cost is a concern and
3 I'm doing the best I can in regards to that and in regards to
4 my duty to provide Mr. Abdo a proper defense.

5 THE COURT: That does sound accurate and does clear things
6 up.

7 MR. BOYD: Thank you, Your Honor.

8 THE COURT: Demonstrates that you did get quite a bit of
9 assistance. Anything else you wish to present?

10 MR. BOYD: Not in regards to offers of proof or bills of
11 exceptions, Your Honor. I would request a brief time period
12 where I can meet with my client and the court reporter outside
13 the presence of other people to put one thing on the record.

14 THE COURT: That's not appropriate, Counsel.

15 MR. BOYD: Yes, Your Honor.

16 THE COURT: I don't know what you mean. You and the court
17 reporter and your client. That's all -- that's not --

18 MR. BOYD: Yes, Your Honor.

19 THE COURT: -- something I've ever heard anybody
20 attempting to do. If you want to exclude the -- I don't know.
21 Approach the bench and let me know what you -- what's up.

22 (On-the-record bench conference, to wit:

23 THE COURT: What are you trying to do?

24 MR. BOYD: Your Honor, I'm simply trying to preserve my
25 client's choice as to whether or not he wants to testify or not

1 before we go into the defense of the case.

2 THE COURT: Well, you can't do that with just you and the
3 court reporter and your client.

4 MR. BOYD: Well, I mean, I'm fine. I mean, I don't want
5 it revealed to the prosecution what that decision is going to
6 be, Your Honor.

7 THE COURT: Why not? They're going to find out as soon as
8 you do.

9 MR. BOYD: I don't even know right now, Your Honor.

10 THE COURT: That's what I said. They're going to find out
11 as soon as you do.

12 MR. BOYD: And that's --

13 THE COURT: You need to talk to him privately certainly.

14 MR. BOYD: Yes, Your Honor. I was just trying to preserve
15 it on the record.

16 THE COURT: Well, you can do that but not just you and the
17 court reporter and -- I mean, we can exclude the U.S.
18 Attorney's office I guess. I don't know.

19 MR. FRAZIER: I can step out and do what you need to do.

20 MR. BOYD: Okay, Judge.

21 THE COURT: We can clear the courtroom if you want to do
22 that.

23 MR. BOYD: Yes, Judge. That's what I would request.

24 THE COURT: Well, I need to be here.

25 MR. BOYD: Yes, Judge. I was not trying to exclude the

1 Court. I misspoke.

2 (End of bench conference.)

3 THE COURT: All right. Let's take a brief recess and we
4 need to clear the courtroom.

5 LAW CLERK: All rise.

6 Court will stand in recess.

7 (A break was taken from 10:41 to 10:46.)

8 (Government counsel not present.)

9 LAW CLERK: All rise.

10 THE COURT: Be seated, everyone.

11 Mr. Boyd?

12 MR. BOYD: Your Honor, at this time I would like to advise
13 on my record -- on the record the perils that I think my client
14 has in taking the stand to testify. Advise him against
15 testifying and also allow him to know the right that he can
16 choose to testify or he can choose not to testify.

17 Mr. Abdo, what is it that is your choice in regards to
18 testifying or not testifying?

19 THE COURT: Well, let me make that as clear as I can.

20 Mr. Abdo, you have the right to testify. The absolute
21 right to testify. You have the absolute right not to testify,
22 and if you elect not to testify, then I will instruct the jury
23 that they are not to make any inference or suggestion of your
24 guilt because you didn't testify. That's part of the
25 instructions the Court always gives if a defendant elects not

1 to testify. It's strictly your choice based on your advice of
2 your attorney but essentially you are the one that makes the
3 choice.

4 MR. BOYD: Mr. Abdo, knowing that, what is it your choice
5 to do?

6 THE DEFENDANT: I'm going to take Mr. Boyd's advice and
7 not testify.

8 MR. BOYD: Your Honor, with that all I've got is I'd
9 request we bring the prosecutor back in so I can make a Rule 29
10 motion and then I'll conclude.

11 THE COURT: We can let everybody back in except the jury.
12 (Government counsel entered the courtroom.)

13 MR. BOYD: Your Honor, my last pretrial matter before we
14 bring the jury back is pursuant to Rule 25 to request that the
15 Court dismiss the charges.

16 THE COURT: 25 or 29?

17 MR. BOYD: Rule 29, Your Honor. I apologize. I misspoke.

18 THE COURT: Whichever you prefer.

19 MR. BOYD: I prefer 29.

20 THE COURT: 29 is better.

21 MR. BOYD: I think 29 gets me a little further, Your
22 Honor.

23 The government just failed to prove its case in chief,
24 Your Honor. Specifically it has failed to prove the component
25 piece in regards to the components being available and readily

1 assembleable into a device. And I think that because that
2 makes their first and fourth counts fail that that also
3 necessarily makes their second, third, fifth and sixth counts
4 fail as a matter of law.

5 I would further offer to the Court that the way the
6 statute is written is unconstitutional in that it allows
7 Mr. Abdo to be convicted for his mens rea alone and not for
8 mens rea and act his rea because in effect is what's happening
9 is to charge him under Count One they're first having to find
10 an attempt to build a device and secondly they're having to
11 find that that attempt to build the device is a subsequent
12 attempt to cause harm to others and that -- that goes
13 throughout each of the counts, thereby making all of the counts
14 fail as a matter of law, Your Honor, and I would respectfully
15 submit that to the Court for its consideration and at this
16 point to dismiss the charges against Mr. Abdo.

17 THE COURT: That motion will not be granted.

18 Are we ready to bring the jury in and proceed with the
19 defense?

20 MR. BOYD: Yes, Your Honor.

21 THE BAILIFF: All rise.

22 (The jury entered the courtroom at 10:52.)

23 THE COURT: Be seated, everyone.

24 All right. Ladies and gentlemen, the government has
25 rested. We've taken care of the legal matters we needed to

1 take care of and we're ready to begin the defense. Mr. Boyd
2 has stepped outside to find his first witness though. We'll
3 wait a second until he locates him or her.

4 MR. BOYD: Your Honor, I'm going to call Detective
5 Rinehart at this time.

6 (The witness was sworn.)

7 DIRECT EXAMINATION

8 BY MR. BOYD:

9 Q. Detective Rinehart, on the 27th day of July 2011 do
10 you remember what you were doing?

11 A. Yes, sir.

12 Q. And were you driving a vehicle that was equipped with
13 a camera and recording device?

14 A. Yes. I was.

15 Q. And specifically the camera and recording device that
16 is in the vehicle that you were driving, was it functioning
17 that day?

18 A. Yes. It was.

19 Q. And is that a recording device that has a camera on
20 it?

21 A. Yes. It does.

22 Q. And does it also have an audio component on it?

23 A. Yes. It does.

24 Q. And does it have a microphone that is a wireless
25 microphone that kind of looks like a pager?

1 A. Yes. It does.

2 Q. With respect to the device in that car, does the
3 camera rotate?

4 A. Yes.

5 MR. SOFER: Objection as to relevance, Your Honor.

6 THE COURT: Overruled.

7 BY MR. BOYD:

8 Q. Does the camera rotate?

9 A. Yes. It does.

10 Q. And so that if you were to want to videotape an
11 entire arrest sequence or interaction with a citizen, you can
12 point it where you need to point it as an officer and then
13 stand next to them with the mic activated so that you could
14 record that entire encounter?

15 A. Yes.

16 Q. Previously it has been -- there has been information
17 regarding the vehicle you were in not having a camera that
18 turns. Are you absolutely certain that the camera in that
19 vehicle swivelled and turned?

20 A. Yes. I am because I was driving that vehicle for a
21 time and if I conducted a traffic stop or any citizen contact
22 and if that was off my view I could go and adjust the camera to
23 actually pick up my contact.

24 Q. And so not only can you adjust the view, you can --
25 you can even review it to make sure that you've got the framing

1 correct for what you're trying to accomplish?

2 A. Yes. There's a monitor in the car.

3 Q. And with regard to the mic system on that car, it's
4 an older style unit, correct?

5 A. Yes. It is.

6 Q. And by that I mean in the front of the car there's a
7 camera and a camera system and then wires run through the car
8 and in the trunk of the car in a vault is essentially a VCR,
9 correct?

10 A. Yeah. I don't know all the technical stuff that
11 comes behind all that. I do know that there's a vault in the
12 trunk of the vehicle.

13 Q. Okay. And so when you hit the record button on the
14 device for the pager like device, when you do that, is there a
15 slight lag time?

16 A. Yes. There is.

17 Q. And that slight lag time is only a few seconds,
18 correct?

19 A. I believe so. Yes.

20 Q. It's not an extended period of time?

21 A. It depends on what you mean by extended.

22 Q. Well, I mean, for instance if you had hit the button
23 and then Mirandized somebody, at some point you would hear some
24 of the Mirandization?

25 A. Well, I mean, it depends if it was immediately after

1 you -- one activates the mic or are we talking about minutes
2 after?

3 Q. No. I'm talking you hit the button. You're not
4 aware of the lag time and then you begin to read the Miranda
5 warning from a card. I'm not saying you get the whole Miranda
6 warning but you would at least get part of it?

7 A. That's possible. Yes.

8 Q. Okay. Now, with respect to the day in question, you
9 showed up on scene, right?

10 A. Yes.

11 Q. And at what point did you have an interaction with
12 Detective Wingfield?

13 MR. SOFER: Objection as to relevance again, Your Honor.

14 THE COURT: Overruled.

15 BY MR. BOYD:

16 Q. At what point did you have interaction with Detective
17 Wingfield?

18 A. From the beginning of shift which is 0700.

19 Q. Okay. And at the time you arrived in the vehicle you
20 arrived in, did you have the opportunity to tell him what to do
21 in regards to Mirandization?

22 A. Prior to our arrival?

23 Q. No. When you arrived on scene and first interacted
24 with him.

25 A. Not immediately. No.

1 Q. At some point did you tell him to make sure before
2 any questions got asked of Mr. Abdo that Detective Wingfield
3 Mirandize him?

4 A. A time later, yes. After we detained -- when we
5 detained Abdo and he was already in the car. Of course we were
6 running around doing all kind of things trying to secure the
7 building. I do recall going to the vehicle where Detective
8 Wingfield was and reassured that we weren't questioning or
9 talking to the subject without first Mirandizing him.

10 Q. And you gave him a Miranda card for him to accomplish
11 that?

12 A. He had the card. Yes.

13 Q. And that was one you'd provided him?

14 A. No. I didn't provide him the card. He had a card.

15 Q. Okay. And for the rest of the day while you were on
16 scene did you ever see any explosives -- any explosive device,
17 a bomb even partially built?

18 A. I did not. I wasn't near the area when that was
19 exposed.

20 Q. Okay. Did you see the backpack?

21 A. Yes. I did.

22 Q. And did you ever see any sort of functioning device
23 in the backpack?

24 A. No. We did not open the backpack at that time.

25 MR. BOYD: Okay. No further questions.

1 MR. SOFER: None from the government, Your Honor.

2 May the witness be excused?

3 MR. BOYD: Yes, Your Honor.

4 THE COURT: Yes. You may be excused, ma'am.

5 MR. BOYD: Your Honor, I'll call Detective Wingfield next.

6 (The witness was sworn.)

7 DIRECT EXAMINATION

8 BY MR. BOYD:

9 Q. Officer Wingfield, good morning. Please state your
10 name for the record.

11 A. Willie Wingfield.

12 Q. And were you working on the morning of -- or on the
13 day of July the 27th, 2011?

14 A. Yes, sir.

15 Q. And do you remember that day?

16 A. Yes, sir.

17 Q. Were you working with Detective Rinehart that day?

18 A. Yes, sir.

19 Q. At some point were you called to the America's Best
20 Value Inn?

21 A. Yes, sir.

22 Q. And at that time did you come into contact with
23 Mr. Abdo?

24 A. Yes, sir.

25 Q. Were you the person who initially talked with

1 Mr. Abdo?

2 A. Initially, yes, sir.

3 Q. And so after he was placed into custody and arrested,
4 you were the first person to talk with him regarding anything?

5 A. After we detained him I spoke with him at the -- at
6 the car, read him his rights.

7 Q. Okay. And when you read him his rights, did you turn
8 the video camera so that it would be on him so that you could
9 document that?

10 A. No, sir. I didn't.

11 Q. And why didn't you do that?

12 A. All I did was activate the camera. I didn't turn it
13 around or anything like that. The vehicle that I was in was an
14 older vehicle and wasn't too familiar with that vehicle. I was
15 used to driving the newer model vehicles and that vehicle was
16 an older vehicle.

17 Q. What does that mean? Does that mean that somehow
18 that -- you're representing to the jury that that camera didn't
19 move?

20 A. No, sir. I'm not saying that.

21 Q. Previously you've represented that camera didn't
22 move?

23 A. I'm saying that I didn't have any knowledge that it
24 moved. I didn't attempt to turn it or anything like that. No.
25 I didn't.

1 Q. But previously you've indicated that that camera
2 didn't have the ability to move, right?

3 A. To my knowledge it didn't. I didn't know that it
4 turned around.

5 Q. And the fact is that that camera did move?

6 A. Okay.

7 Q. Is that correct?

8 A. Possibly.

9 Q. Have you had a chance to ride in that vehicle since?

10 A. No, sir.

11 Q. So you haven't been in Officer Rinehart's vehicle
12 since that day?

13 A. Probably after that day but it's been -- it's been
14 awhile since I've been in a patrol vehicle.

15 Q. With respect to the rest of the recording, there is a
16 pager looking device that serves as a microphone, correct?

17 A. Yes, sir.

18 Q. And that pager device once you activate it and hit it
19 allows you to record the contact you have with whoever you
20 might be having contact with?

21 A. That's correct.

22 Q. So when you had contact with Mr. Abdo, you hit the
23 recording device and then started your contact, right?

24 A. Yes, sir.

25 Q. But nowhere on any of those tapes do we hear a

1 Miranda warning, do we?

2 MR. FRAZIER: Judge, I'm going to object to first leading
3 and second this is irrelevant.

4 THE COURT: Overruled.

5 BY THE WITNESS:

6 A. That's correct.

7 BY MR. BOYD:

8 Q. And it takes some period of time to read a Miranda
9 card, doesn't it?

10 A. A few seconds.

11 Q. And you read -- you read your Miranda warning from a
12 card that you have, right?

13 A. Yes, sir.

14 Q. Isn't it true that you really didn't read that
15 Miranda warning?

16 A. No, sir. That's not true.

17 MR. BOYD: No further questions.

18 MR. FRAZIER: We have no questions of this witness, Your
19 Honor.

20 THE COURT: You may step down.

21 MR. BOYD: Your Honor, I'll call Officer Bradley next.

22 Your Honor, at this time I'm going to offer into evidence
23 Defense Exhibit No. 6 which is a clip of the arrest sequence
24 and the detention sequence from America's Best Value Inn.

25 MR. FRAZIER: Your Honor, we have no objections to the

1 extent it has any relevance.

2 THE COURT: It will be admitted then.

3 (Exhibit(s) admitted: D6)

4 DIRECT EXAMINATION

5 BY MR. BOYD:

6 Q. Officer Bradley, do you recall the day of July the
7 27th, 2011?

8 A. Yes, sir.

9 MR. BOYD: And I'm going to ask that we bring up the first
10 clip on Defense Exhibit No. 6. And if you would just hit pause
11 for right now.

12 BY MR. BOYD:

13 Q. Now, you've seen these series of videos in regards to
14 America's Best Value Inn before, correct?

15 A. Yes, sir.

16 Q. And what -- what do they show?

17 A. This particular one shows him exiting going down the
18 hallway toward the exit of the building.

19 MR. BOYD: Okay. Would you please hit play?

20 (Video played.)

21 MR. BOYD: And would you please show me the next clip?

22 Clip No. 2?

23 BY MR. BOYD:

24 Q. And this next clip what does it show?

25 (Video played.)

1 BY THE WITNESS:

2 A. It's the subject exiting the front lobby of the
3 business.

4 BY MR. BOYD:

5 Q. And as he is exiting the front lobby, what --

6 MR. BOYD: Pause it right there.

7 BY MR. BOYD:

8 Q. What is happening right there?

9 A. He's exiting the lobby. Lieutenant Boone and I have
10 observed him leaving, recognize him as the suspect that we were
11 looking for and as Lieutenant Boone is exiting he's drawn his
12 pistol.

13 Q. As he was walking, he wasn't walking in a suspicious
14 manner, was he?

15 A. No, sir.

16 Q. And he wasn't behaving in a suspicious way, was he?

17 A. At that moment, no, sir.

18 MR. BOYD: And continue the clip.

19 (Video played.)

20 BY MR. BOYD:

21 Q. And at the end of that clip did it actually show
22 Lieutenant Boone point his pistol at Mr. Abdo?

23 A. I believe so. Yes, sir.

24 MR. BOYD: Next clip, please.

25 (Video played.)

1 BY MR. BOYD:

2 Q. Now, this shows what's going on outside, correct?

3 A. Yes, sir.

4 Q. And it's happening up around 13, right?

5 A. Yes, sir.

6 Q. Can you indicate on the screen -- can you touch it
7 and indicate where all this is happening? It should be up by
8 the --

9 A. Up by the time stamp, sir. Right underneath the
10 13:04.

11 Q. If you'll touch the screen I believe it'll make a
12 mark. Or maybe -- there we go. And that's where everything's
13 happening, correct?

14 A. Yes, sir.

15 Q. And so over a period of a few seconds what happens?

16 A. The subject exited the business. Lieutenant Boone
17 had him at gunpoint. Initially I did not based on the fight or
18 flight in case I had to give chase. When the subject initially
19 had his arms up, then put them down somewhat, I did draw my
20 pistol also and we ordered him into a prone position face down
21 on the ground.

22 Q. And he immediately went down, correct?

23 A. Yes, sir.

24 Q. And then at some point an officer comes out and what
25 does that officer do a few seconds later?

1 A. Detective Wingfield came out. I had him remove the
2 backpack from the subject and Detective Wingfield did place him
3 into handcuffs.

4 Q. And where did the backpack go?

5 A. Initially adjacent to where they were at and a little
6 bit later I had Detective Wingfield move the backpack between
7 the pillars.

8 Q. And this is the same backpack that nothing in regards
9 to a device was located in, correct?

10 A. There were items in the backpack but not a device in
11 the backpack.

12 Q. There was nothing that could explode in the backpack?

13 A. No, sir.

14 Q. Did you come to know where he was headed through your
15 investigation?

16 A. No, sir. I remember that the cab was there for him.
17 I'm not -- I don't recall what his destination was at that
18 point.

19 Q. Did you ever know?

20 A. Not directly, sir. No. I did not ask him that.

21 Q. Okay. And are you the officer again that essentially
22 questioned him first?

23 A. Yes.

24 MR. BOYD: Now, if we could play the next clip.

25 (Video played.)

1 BY MR. BOYD:

2 Q. In this last clip which vehicle is that pulling up
3 right there?

4 A. That's one of our Killeen Police Department patrol
5 vehicles that was being utilized by Detective Anita Rinehart
6 and Detective Wingfield that day.

7 Q. And the purpose of that was to get him out of the
8 public eye into y'all's area where y'all could kind of control
9 the situation a little better?

10 A. That among other things.

11 Q. And then you -- it's hard to see, but basically
12 someone gets out of the car. Someone walks around the car.
13 He's placed in the car. The car backs up and then parks in the
14 sunlight right outside that shed?

15 A. Yes, sir.

16 (Video played.)

17 MR. BOYD: And you can stop the playback.

18 BY MR. BOYD:

19 Q. Now, previously you had testified that you had had a
20 conversation with Detective Wingfield telling him how to move
21 items around and that testimony kind of indicated it took a
22 little bit of time.

23 A. I'm not sure of the exact time. I had him initially
24 remove the backpack from the suspect. Detective Wingfield
25 placed the suspect into handcuffs and a short time later I did

1 have him move the backpack away from where we were located.

2 Q. And by short time, that's really just a few seconds,
3 correct?

4 A. I don't remember the exact time line.

5 Q. I mean, this --

6 A. It was within moments of us placing him in the
7 handcuffs.

8 Q. I mean, this accurately depicts the time?

9 A. Yes, sir.

10 Q. The amount of time of -- that it actually took for
11 all of that to happen?

12 A. Yes, sir.

13 Q. And at this point in the video you didn't -- you had
14 Mr. Abdo in custody and you had a backpack sitting there in the
15 public and that was about 1:00 p.m.?

16 A. Yes, sir. I believe that's the --

17 Q. At what point did EOD show up?

18 A. It was a while later.

19 Q. So there wasn't a big concern about the backpack?

20 A. Yes, sir. There was.

21 Q. So if there was such a big concern, why did it take
22 several hours?

23 MR. FRAZIER: Judge, I'm going to object to the relevance
24 of the questioning.

25 THE COURT: Overruled.

1 BY THE WITNESS:

2 A. Because we made initial notification through the Bell
3 County Communication Center to Fort Hood EOD and they have
4 their own time line to which they respond to those incidents as
5 far as a recall and getting the equipment and getting to our
6 location, but EOD was called immediately.

7 BY MR. BOYD:

8 Q. Okay. With respect to people going in and going out
9 of the room, either 230 or 248, who went into the Room 230
10 before EOD?

11 THE COURT: What room are you talking about, Counsel?

12 MR. BOYD: Room 230 where the -- where the majority of
13 these items were located.

14 BY MR. BOYD:

15 Q. Who went in before EOD went in?

16 A. Nobody to my recollection, sir.

17 Q. Why would the room be open when EOD got there?

18 A. I'm not sure, sir.

19 Q. Would that typically indicate entry had been made?

20 A. Or the door wasn't locked or closed when it -- when
21 the person last left it.

22 Q. Do you believe a person that had these items in a
23 room would leave a door --

24 MR. FRAZIER: I'm going to object to speculation, Your
25 Honor.

1 THE COURT: Sustained.

2 MR. BOYD: No further questions, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. FRAZIER:

5 Q. Yesterday we showed the Dash Cam 55?

6 A. Yes, sir.

7 Q. Government's Exhibit No. 55. The time stamp that's
8 on the dash cam, is that a correct or incorrect statement of
9 the time? Was it off?

10 A. It was off. Yes, sir.

11 Q. By several minutes?

12 A. Yes, sir. It was a significant amount of time.

13 Q. Okay. But it did not indicate the actual correct
14 time?

15 A. It did not.

16 MR. FRAZIER: All right. That's all I have. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. BOYD:

19 Q. Did you ever locate a device in either Room 230, 248
20 or in the backpack?

21 A. I did not, sir.

22 MR. BOYD: Nothing further.

23 MR. FRAZIER: Nothing further, Your Honor.

24 THE COURT: You may step down, sir.

25 MR. FRAZIER: May this witness be excused?

1 MR. BOYD: Yes, Your Honor.

2 THE COURT: Yes. You may.

3 (Conference between Mr. Boyd and defendant.)

4 MR. BOYD: Your Honor, ladies and gentlemen of the jury,
5 defense rests.

6 THE COURT: Any rebuttal, Mr. Frazier?

7 MR. FRAZIER: United States rests and close, Your Honor.

8 THE COURT: Members of the jury, that completes the
9 evidence in this case. The next order of business would be for
10 me to read to you the Court's instructions, for the attorneys
11 to make their final summations and then for you to deliberate
12 upon a verdict. Preparing those instructions is something
13 that's ongoing throughout the trial, but it can't be completed
14 until the evidence is closed. So that's going to take a little
15 while. It's almost 11:30. So it's an appropriate time to
16 recess a little early for lunch anyway. The lawyers and I will
17 be working on that legal document while you're enjoying a
18 leisurely lunch and I'll ask you to be back at 1:00 o'clock and
19 we'll make every effort to be ready to proceed at that point.
20 I can't promise we will, but we'll do our best. You'll be in
21 recess till 1:00 o'clock.

22 LAW CLERK: All rise.

23 (Jury exited the courtroom at 11:24.)

24 THE COURT: Counsel, let me get a proposed final charge
25 ready as soon as I can. We'll bring copies of that out to you

1 momentarily.

2 LAW CLERK: Court will stand in recess till 1:00 o'clock.

3 (A break was taken from 11:24 to 12:30.)

4 THE COURT: Okay. Does the government have any objections
5 to the charge?

6 MR. FRAZIER: No objections, Your Honor.

7 THE COURT: Mr. Boyd?

8 MR. BOYD: Your Honor, I have one objection on Page 16.
9 Pursuant to the language in United States v. Sanchez at 667
10 F.3d 555 -- well, it's actually at 563 in that decision out of
11 the Fifth Circuit in 2012. I would object to the language that
12 it starts second colon: That the defendant did enact
13 constituting a substantial step towards the commission of each
14 crime which strongly corroborates the defendant's intent.
15 Pursuant to U.S. v. Sanchez I think that it needs to state and
16 amounts to more than mere preparation as the finding in U.S. v.
17 Sanchez in regards to that point is in short a substantial step
18 must both be, one, an act strongly corroborative of the actor's
19 criminal intent and, two, an amount -- and to amount to more
20 than mere preparation.

21 So what I'm objecting to and asking for is just the lack
22 of including the mere preparation language and asking that that
23 be included at that location.

24 THE COURT: What specifically you want to do is you wanted
25 to add after intent. You said something specific.

1 MR. BOYD: And amounts to more than mere preparation, Your
2 Honor.

3 THE COURT: I don't see a problem with that.

4 MR. FRAZIER: Our only response would be, Judge, it's
5 already contained on Page 17 in the explanation of it. Mere
6 preparation without more is not an attempt --

7 THE COURT: It doesn't hurt to say it twice.

8 MR. FRAZIER: Okay.

9 THE COURT: Say it again, Mr. Boyd.

10 MR. BOYD: Your Honor, and amounts to more than mere
11 preparation.

12 That's everything, Your Honor.

13 THE COURT: How long do you want to argue then? How long
14 do you request for argument?

15 MR. FRAZIER: 45 minutes.

16 THE COURT: 45 what?

17 MR. FRAZIER: Minutes.

18 MR. BOYD: Your Honor, I don't think it'll take that long.

19 THE COURT: I don't either. 30 minutes aside.

20 LAW CLERK: All rise.

21 (A break was taken from 12:34 to 1:03.)

22 LAW CLERK: All rise.

23 (The jury entered the courtroom at 1:03.)

24 THE COURT: Be seated, everyone.

25 Ladies and gentlemen, as I mentioned earlier, the next

1 order of business is for me to read to you the Court's
2 instructions. It is a lengthy legal document. Each of you has
3 a copy of it to follow along with me if you wish and you may
4 take that with you to the jury room. Let me assure you that I
5 enjoy having to read this about as much as you're going to
6 enjoy having to listen to me, but the law requires it.

7 (Jury instructions were read by the Court.)

8 THE COURT: The remaining two pages, ladies and gentlemen,
9 I will read to you after the attorneys have made their
10 summations since those deal with how you should go about your
11 deliberations.

12 Mr. Frazier, are you going to open for the government?

13 MR. FRAZIER: Mr. Schneider's going to open for the United
14 States. I'll be closing, Your Honor.

15 THE COURT: Mr. Schneider, shall I give you a warning
16 after you've used any particular amount of time?

17 MR. SCHNEIDER: Yes, Your Honor, at the 20 minute mark,
18 please.

19 THE COURT: Yes, sir.

20 OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT

21 MR. SCHNEIDER: May it please the Court, defense counsel,
22 ladies and gentlemen of the jury. First of all, on behalf of
23 the government I'd like to thank you all for your time and
24 attention and your service during the last few days. You've
25 gone and heard a lot of witnesses. You've seen a lot of

1 evidence in court and we're going to go through a little bit of
2 that today before you deliberate.

3 Now, your first witness that you heard was Special Agent
4 Mike Owens from the FBI and he told you about the interviews he
5 conducted after that defendant was arrested on July 27th of
6 2011. We learned a lot of information from those interviews
7 because the defendant told Agent Owens everything over several
8 hours on the first day July 27th and then they met again the
9 second day July 28th to continue those interviews with Agent
10 Owens where he continued to lay out what his plans were. So
11 I'm going to review with you some of the things we learned just
12 from the defendant's own statements. And things that we later,
13 through the introduction of other witnesses and all the other
14 evidence, what we were able to corroborate of what the
15 defendant said to Agent Owens.

16 The first thing we have is that the defendant intended to
17 conduct an attack on soldiers from Fort Hood. I'm showing you
18 a small clip from Government's Exhibit No. 55. We'll back that
19 up.

20 (Video played.)

21 MR. SCHNEIDER: Now, that was the statement that the
22 defendant made in the back of the patrol car to Sergeant
23 Bradley. Sergeant Bradley testified and told you about his
24 interview in the back of that patrol car. That's the
25 defendant's own words about what his intent was in order to

1 conduct an attack on Fort Hood.

2 We also know from the defendant's own words that he
3 intended to build a bomb. And looking at Government Exhibit
4 150 we know from Clip 2 -- and this is a shortened clip -- that
5 he intended to --

6 (Video played.)

7 MR. SCHNEIDER: And if we can play Clip 3 also from
8 Government 150.

9 (Video played.)

10 MR. SCHNEIDER: Ladies and gentlemen, the defendant's own
11 words. We know what his intent is. We don't have to guess at
12 it.

13 He has also explained his motivation for building the bomb
14 and why he wanted to commit murder in this case. Also in the
15 conversation he had with his mother, this was a conversation he
16 had with his mother after he was arrested in this case. That's
17 part of Exhibit 150.

18 And if we can play Clip No. 4.

19 (Video played.)

20 MR. SCHNEIDER: Once again the defendant's own words.

21 We know from his statements that he bought the components
22 himself. We've been able to corroborate that. You saw many
23 witnesses here about -- who testified about the components that
24 he bought. You had witnesses from Walmart who testified about
25 the items he purchased in Walmart. You had surveillance video

1 from Walmart. You had a witness who testified from Lowe's
2 about the items he bought there, including the Lowe's boxes and
3 the Christmas lights. The Christmas lights which were a
4 component of the bomb that he intended to build.

5 You heard from the store employee Mr. Hutton at Surplus
6 City where he bought the uniform with the name Smith. Part of
7 his plan to conduct an attack.

8 You heard from the witnesses Ms. Cathy Cheadle and
9 Mr. Greg Ebert from Guns Galore about his purchase of the
10 powder and the ammunition at the Guns Galore store in Killeen.

11 We know he tried to hide the fact that he bought the
12 items. He paid in cash. He wore sunglasses in these stores.
13 Sunglasses when he was inside and it made no sense to wear
14 sunglasses. Sunglasses that in most cases he never took off.

15 We know he was following the instructions on how to build
16 a bomb from Inspire magazine, an article put out by Al-Qaeda in
17 the Arabian Peninsula geared for the person that has no
18 explosives experience. The article is entitled How To Build A
19 Bomb In The Kitchen Of Your Mom and it's geared for people to
20 take household items and build a bomb to commit these kind of
21 attacks exactly what that defendant wanted to do, to commit an
22 attack, to build a bomb and kill as many people as he could.

23 We know he had planned to execute attacks within a day of
24 being arrested. How do we know? Because the defendant told
25 Agent Owens after he was arrested. He originally had planned

1 to do it the day before his arrest and then he changed his
2 plan. The day he was arrested he had all the components in
3 that hotel room. You heard from Special Agent Stryker, the
4 bomb expert in that case, who said that in his expert opinion
5 all the necessary components to build that bomb were present in
6 the room. He also said that following the instructions in that
7 article would have led to a working bomb, and you saw the video
8 of what that bomb might have looked like. We know he had the
9 article. It was in the backpack when he was arrested.

10 According to his statements the day he was arrested, he
11 was also going to do recon around the area to pick out which
12 Chinese buffet restaurant or other restaurant he was going to
13 use for the attack. Remember in the testimony of Agent Owens
14 that what he wanted to do was find a restaurant that was
15 crowded between the hours of 11:00 and 2:00 when most soldiers
16 are at lunch and get literally the most bang for his buck. He
17 wanted to kill as many people as he could in that restaurant.
18 Civilians would be collateral damage. That's what Agent Owens
19 testified to as to what the defendant said. And what was the
20 defendant going to do while he was outside that Chinese
21 restaurant? He was going to wait outside with that handgun,
22 the handgun you've seen in evidence. And how many rounds of
23 ammunition did he have? 143 rounds of ammunition. He was
24 going to kill anybody that came out of that restaurant.

25 We also know in his plans to execute the attack the

1 following day which he had said that he had planned to leave
2 the hotel early. We heard from the hotel clerk at the
3 America's Best Value Inn who said that originally when the
4 defendant checked in he checked in for a certain number of
5 nights and then he shortened his stay and got a refund. So he
6 had planned on moving up this attack and conducting it sooner.

7 We know from his statements and from the other evidence
8 you've heard and seen that he was giving up his old life. His
9 old life in Fort Campbell in Kentucky. He left Fort Campbell
10 where he was an active duty soldier and he didn't return.

11 He abandoned his Cadillac at the truck wash at the Waffle
12 House in Oak Grove, Kentucky. A fairly new car that he
13 abandoned. He abandoned all the items that you've seen in
14 evidence. He abandoned the handcuffs, the cattle prod, the
15 body bag, the body bag carrier, the masks, the gloves, the
16 bleach, the shovel, all the things that he intended to use for
17 his first murder operation. That was interrupted and he had to
18 go on the run and he abandoned that life. He abandoned
19 everything he had in his car.

20 What else did he have in his car? He had basically all
21 the documents for his entire life, his social security number
22 card, his passport. He had his enlistment papers, his training
23 certificates from the Army, his marriage certificates.
24 Everything you would collect in your life he left in that car.
25 He left the car keys on the seat. He took the black backpack

1 and he got out of there on foot. What was his reasoning for
2 doing that? Well, part of it is what he told to Agent Owens.
3 He said that he intended to die a martyr.

4 He took his roommate's identification Asher Pluto and he
5 traveled under that name eventually getting to Texas. Along
6 the way he bought that gun from Abraham Wherry, the individual
7 who testified that he sold the gun. He bought that gun under
8 the name Asher Pluto and he gave that name and that ID for the
9 notarization at the UPS. He checked in the hotel in Killeen
10 under Asher Pluto.

11 We know his intent to kill U.S. soldiers went as far back
12 as July 3rd of 2011 when he was still in Fort Campbell and in
13 Exhibit 149 we're going to play two clips.

14 (Video played.)

15 MR. SCHNEIDER: We know his plan was interrupted. That's
16 when he left Fort Campbell and he made his way to Texas.

17 He said in one of the clips which we're not going to play
18 that he utilized all his resources. Over the course of those
19 23 days from July 4th to July 27th he traveled by bus and taxi
20 to Nashville to buy the gun and then to Texas where he
21 ultimately stopped in Killeen. He purchased the gun. He used
22 his cash, \$460 for the gun alone. He spent thousands of
23 dollars on all these purchases at Walmart. There were several
24 three and \$400 purchases at Walmart. He went to all these
25 stores to buy the components. And when all was said and done,

1 we know that the defendant knew he committed federal crimes.

2 In Exhibit 150, Clip No. 5 the defendant acknowledged that in a
3 call with his mother.

4 (Video played.)

5 MR. SCHNEIDER: Now, looking at the counts in the
6 indictment, I'm going to walk you quickly through the counts in
7 the indictment. Count One, attempt to use a weapon of mass
8 destruction. There's no question that this occurred on the
9 date July 27. There's been no question that it happened in the
10 Western District of Texas, Waco Division in the United States.
11 There's no question that it was knowingly or unlawfully. He
12 stated he intended to build a bomb and he had the instruction
13 and the components to do it. There's no question that he
14 planned to use the bomb against a person or property within the
15 United States. He said he planned to kill soldiers. He said
16 he planned to detonate a bomb in Killeen in a restaurant.
17 That's property as well. We know that the results of the
18 offense would have affected interstate commerce. You heard the
19 testimony of Ronald Stamper from Fort Hood on all the actions
20 that Fort Hood would have taken to affect interstate commerce.
21 You know from your common sense that it would have affected
22 interstate commerce. You know from the testimony of Special
23 Agent Jason Cromartie what the actions of the FBI would have
24 been had there been an explosion in that restaurant and how
25 that would have affected interstate commerce and you saw the

1 video of the replica of the bomb that Special Agent Stryker did
2 and what it would have done to that restaurant.

3 The defense has tried to dispute that this was an attempt.
4 Let's look briefly at the steps the defendant took to conduct
5 his planned attack. He used fake ID to avoid detection. He
6 purchased the 40-caliber handgun in Nashville. He downloaded
7 the Inspire magazine article on how to build the bomb. He
8 purchased all the bomb components which are more than 30
9 different items related to this plan. He traveled from
10 Nashville to Dallas and then to Fort Hood. He purchased six
11 pounds of gun powder and shells at Guns Galore. He purchased
12 the Christmas lights, the contact cement, the tape and the
13 boxes at Lowe's. He bought the uniform to fit in under a
14 different name Smith and a different rank. He was a private
15 first class. He got a sergeant rank. He got a hotel room in
16 Killeen. What was he going to do in the hotel room? He was
17 going to build a bomb there. That's part of the steps that he
18 took to build this thing. He opened the pressure cooker box
19 that he had bought at Walmart. He then in the floor of that
20 hotel room began assembling this. He cut open five shotgun
21 shells and removed the powder and the shotgun pellets from
22 those shells. He placed the shot in a plastic cup. He poured
23 some of the gun powder and the shot inside the pressure cooker.
24 He started making this bomb in the hotel room. There's no
25 doubt about it from the testimony of Sergeant Grimes who was

1 the first person to enter that room and saw the pressure cooker
2 on the floor opened and with these items in it. He conducted a
3 test burn of the powder on the plastic razor that you've seen.
4 He had three of the four magazines for the gun loaded with some
5 ammunition in it. He planned to do recon on the restaurants
6 and finally choose a restaurant. He changed his hotel checkout
7 date because he had figured out when he was going to plan the
8 attack and he spent over \$2,000 on this plan.

9 Count Two, the attempt to kill members of the U.S. Army.
10 From July -- the beginning of July until at least the 27th of
11 July when he was arrested, there's no question about that, the
12 date. He says he planned to kill soldiers at Fort Campbell in
13 early July. So we know it starts in early July. His plan was
14 interrupted which he's admitted. And it continued until his
15 arrest. There's no question that this also happened in the
16 Western District of Texas and elsewhere.

17 The attempt to kill are the same as all the steps he took
18 for his attempt to use a weapon of mass destruction. Plus he
19 had the gun. He was going to kill with that gun. If he walked
20 into that restaurant and he filled that bomb with sugar and not
21 gun powder and it fizzled and it didn't go off, he had a gun
22 with 143 rounds of ammunition that he was going to use to kill
23 anybody he could. Four magazines, 143 rounds of ammunition.
24 There's no question about the premeditation or the malice
25 aforethought in this case. He had the murder kit, all those

1 murder items for the operation, in his words, that he planned
2 to conduct at Fort Campbell and then all of his planning in
3 Texas. He's already admitted multiple times that he was
4 targeting members of the uniformed services. He was targeting
5 soldiers because he didn't like what the Army was doing in
6 Afghanistan. That's on account of their official duties. He
7 was targeting soldiers, not civilians. Civilians would be
8 collateral damage. All that straight from his confession.

9 Counts Three and Five relate to the possession of the gun.
10 You've seen the testimony of the gun. It's operable according
11 to the experts from the lab. They've identified the gun as a
12 Springfield Armory 40-caliber semiautomatic pistol. It was in
13 his possession. There's no question about that or the date
14 when he possessed it July 27th, 2011 or that it was in the
15 Western District of Texas. The pistol was sold to him by
16 Mr. Wherry. The serial number was on that pistol. It was the
17 same pistol. It was in his backpack and loaded when he was
18 arrested.

19 Was it in furtherance of a crime? Of course it was in
20 furtherance of a crime, ladies and gentlemen. It was in
21 furtherance of both of the crimes of attempted use of a WMD, a
22 weapon of mass destruction, an attempted murder of the
23 soldiers. He's told us why he had the gun in his interviews.
24 It was to shoot the survivors. It was part of his plan. But
25 he also had it on him as he was walking around in the backpack.

1 He didn't leave it in the room with the bomb components. Why?
2 Because he had to have protection. That was also part of the
3 plan. He was carrying that gun with him. He had it with him
4 when he was arrested. That wasn't just for the plan. That was
5 also protection.

6 Counts Four and Six, the final two counts in the
7 indictment. Legally you've already been told that a firearm
8 not only includes a handgun but it also includes a destructive
9 device and you've heard from Agent Stryker that once you have
10 the components of a destructive device and they're readily able
11 to be assembled then make a destructive device and you have
12 that intent, that is a destructive device. So just having the
13 parts is a destructive device under that definition.

14 In Counts Four and Six the firearm can also be a
15 destructive device. So it shouldn't be confusing that Counts
16 Four and Six relates to the bomb, the destructive device. The
17 components were there. They could be readily assembled. There
18 was no requirement that it be readily assembled in three
19 minutes or ten minutes or 12 minutes as long as it can be
20 readily assembled.

21 The bomb was certainly in furtherance of his attempted use
22 of a weapon of mass destruction and his attempt to murder
23 soldiers.

24 The date is not an issue. We know he possessed those
25 components in his hotel room and in his backpack on July 27th

1 of 2011. We know it happened in the Western District of Texas.
2 And we know he possessed it. None of that is disputed, the
3 date, the place or that he possessed it.

4 And you've heard the expert testimony of not only Sergeant
5 Stryker -- Sergeant Grimes and Special Agent Stryker from the
6 lab about whether those components could be readily assembled
7 into a destructive device. Both experts in explosives both
8 said that they could easily be assembled into a destructive
9 device.

10 Based on all that evidence, ladies and gentlemen, the
11 testimony you've heard which I submit to you is credible, we
12 will ask you to return a verdict, the only verdict consistent
13 with the evidence and the law, and that is a verdict of guilty
14 on all six of these counts. Thank you.

15 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

16 MR. BOYD: Your Honor, ladies and gentlemen of the jury.

17 THE COURT: Mr. Boyd, do you want me to warn you when you
18 have two minutes left?

19 MR. BOYD: That's fine, Your Honor. I don't think I'm
20 going to go anywhere near it.

21 THE COURT: Okay.

22 MR. BOYD: Ladies and gentlemen of the jury, defense
23 counsel -- prosecution. I apologize. It's been a long four
24 days.

25 Y'all have heard a lot. And I'm going to pick up right

1 where I left off. I'm glad that the prosecution is now talking
2 about applying the evidence to the law because that's what I'm
3 going to ask you to do and I'm going to ask you when I sit down
4 to return a verdict of not guilty, and the reason I'm going to
5 ask you to return a verdict of not guilty is because under the
6 law the government hasn't proven its case. They haven't gotten
7 there.

8 There's a lot of stuff here. There's a whole lot of stuff
9 here. Having a plan is different than attempting. Everything
10 that you just heard the prosecution talk about was having a
11 plan. And the police got there before the plan could be
12 executed, before the attempt could occur. That's why this is
13 such a difficult case because I don't pretend for one minute
14 that any person sitting in the jury box likes anything that
15 they heard about Mr. Abdo during the course of these last four
16 days.

17 But as the Judge said in his charge, it is so important
18 that in this case our society is and must be ruled by law and
19 not by men. When we look at the evidence, I return you to the
20 idea I first talked with y'all about, the analogy of attempted
21 suicide. What the government would have you believe, as I
22 started off, is that to commit the offense of attempted
23 suicide, let's say again by using a knife, if that person
24 didn't have a knife and that person went out and bought a knife
25 and intended to use that knife, that mere purchase would be

1 attempted suicide. That just goes against common sense. An
2 attempted suicide wouldn't occur until the knife got placed to
3 skin, until it got put into effect. Same analogy only if you
4 commit suicide by using a bomb, the first -- the government
5 would have you believe that at the point the first item got
6 purchased that that was an attempt. Common sense tells us that
7 is not an attempt.

8 Now, let's look at everything that you heard. You heard
9 from all of the witnesses from all of the stores that nothing
10 sold was illegal. Nothing purchased was illegal. That's
11 important. Every one of us has things in our houses that could
12 cause harm to other people. They keep talking about a plan to
13 wait outside and kill survivors and it was a plan. It didn't
14 happen. It didn't come into fruition.

15 When they arrested him, he had a backpack. Didn't have a
16 device in it. It had a couple of clocks, some wire. There was
17 a gun in there. There was some ammunition in there. No plan
18 was being put into effect. Then they try to point some recon
19 that's scheduled. That's hoping to get them a little bit
20 closer because, you know, once we have a recon, wow. That
21 plan's going to be starting to get close. Even by the
22 prosecution's own argument to y'all just now, no recon had
23 occurred. No target had been selected. They can't point --
24 they can't show you a picture and say, you see this restaurant
25 right here? That's what he was going to attack. They can't do

1 that, and because they can't do that, they can't stand up here
2 and tell you with any degree of reliability that a plan had
3 progressed past beyond mere preparation. That's so important.

4 The Judge also said, among the things when you're judging
5 credibility and believability of the witnesses, did the witness
6 have any relationships either with the government or the
7 defense? And that's so important. Of course an expert is
8 going to say that the components could readily be assembled.
9 He's an expert, but that same expert wants y'all all to believe
10 that everyone has this innate knowledge regarding gun powder
11 and how it can be used. And I'm sorry, but that's just not
12 believable. It's just not. People don't come pre equipped
13 with knowledge on gun powder. The government in its closing
14 argument acknowledged that even if the sugar were placed in the
15 pressure cooker and it fizzled. That's important. Those
16 little things, they're important because the government surely
17 never presented this jury a device built entirely off of the
18 article entitled How To Build A Bomb In The Kitchen Of Your
19 Mom. And that's not right. You shouldn't convict somebody of
20 an attempted crime when they bring you a picture of a
21 speculated event and say, look at all this bad stuff that can
22 happen. Sure. Maybe it could have happened. Maybe it
23 couldn't have happened. They didn't bother testing any other
24 way except for the one way that they wanted y'all to see, the
25 one path that they wanted y'all to go down and that is because

1 if y'all don't go down that one path, their entire argument
2 fails. And if their entire argument fails, then you have to
3 return a verdict of not guilty.

4 Count One the Judge instructed you for you to find the
5 defendant guilty of this crime you must be convinced that the
6 government has proved each element of the following beyond a
7 reasonable doubt: First, that the defendant knowingly
8 attempted to use a weapon of mass destruction without lawful
9 authority and, second, that the defendant knowingly attempted
10 to do so against the person -- against a person or property
11 within the United States and the offense or the results of the
12 offense affected interstate commerce.

13 There was no evidence put on that anything that occurred,
14 that actually occurred affected interstate commerce. They
15 talked about what could have happened, but they didn't talk
16 about what did happen. According to this charge that the Judge
17 read you, because of that alone they didn't prove their case.

18 All of the other charges start to relate back to that, but
19 when you look at the language of what is a weapon of mass
20 destruction contained on Page 20 of the charge, it's either a
21 bomb, a whole bunch of other stuff or any combination of parts
22 intended for use and converting any device into any destructive
23 device and from which a destructive device may readily be
24 assembled. They were trying to get that time down as low as
25 possible because they know it's important. Common sense tells

1 us readily -- for something to be in such a position such that
2 it may be readily assembled would be such that you can grab it,
3 assemble it, go and do whatever it is you're going to do with
4 it. You know, you weren't going to just sit there and work and
5 work and work and have to create something. That's different.
6 That's a lot different. Common sense tells us that that's
7 different. That they mentioned it in closing shows that that's
8 very important to them. And if you just do the math by the
9 example that I showed y'all on had he actually built the device
10 based on the way the article said to build the device, it
11 surely would have taken more than 30 minutes. Mr. Abdo is no
12 expert. Mr. Abdo is no Sergeant First Class Grimes who can do
13 wondrous things in building bombs at record speeds. To assume
14 that is not right. They said from the witness stand, you know,
15 expert Mr. Stryker, you know, he said, well, he didn't really
16 track how long it took him. I would argue that there was a
17 great deal of time, probably hours, that went into their
18 creation and testing and analysis and that to represent
19 anything other than that to you, the good members of this jury,
20 is inaccurate.

21 It is okay to follow your common sense. It is okay to
22 follow the law, and it is okay to require the government to
23 prove each and every element beyond a reasonable doubt.

24 In regards to the first count of attempting to use a
25 weapon of mass destruction against a person or property -- I'm

1 sorry. In regards to the first count in terms of attempting to
2 use a weapon of mass destruction, I ask for the jury, you good
3 people, to do the hard thing, to stand up and say not guilty
4 because that's what the law demands.

5 Count Two, because he never got to the attempt in regards
6 to Count One, also fails. He's not guilty of unlawful attempt
7 to kill with premeditation officers of the United States.
8 Employees of the United States.

9 Count Three, it also fails because the first count fails.
10 He didn't attempt to use a weapon of mass destruction against
11 anyone. He just didn't attempt it.

12 Count Four alleges he possessed a firearm in furtherance
13 of a crime for which he may be prosecuted. Again it refers to
14 Count One. They can't prove Count One, they can't prove Count
15 Four.

16 Count Five. They can't prove Count One, they can't prove
17 Count Five.

18 Count Six. They can't prove it. That's asking y'all to
19 find that the destructive device in One should be used to find
20 a crime there and later. It's circular logic. It doesn't
21 work. It's all linked together. If you can't prove Count One,
22 you can't prove Count Six.

23 I know that what I'm asking you to do probably wars with
24 each of you inside of your gut. But I want you to look hard at
25 the evidence and I want you to look hard at whether or not he

1 got past more than mere preparation, and you know that he
2 didn't. And you know that he didn't precisely because the
3 government is screaming so much about everything else. They're
4 bringing in stuff from Kentucky and holding up body bags that
5 have nothing do with anything in Texas and they're trying to
6 say that's an extension of this plan. Nothing happened in
7 Kentucky. Nobody charged him in Kentucky. Those officers told
8 you they didn't charge him in Kentucky. Because there's no
9 crime in Kentucky. And they're holding it up and acting like
10 it is in this federal courthouse. They're doing it to scare
11 you. Please follow the law. Please be just and please find
12 Mr. Abdo not guilty.

13 MR. FRAZIER: Your Honor, could I have a warning when I
14 have two minutes left?

15 THE COURT: Yes, sir.

16 MR. FRAZIER: Thank you.

17 CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT

18 MR. FRAZIER: May it please the Court, counsel for
19 defendant.

20 Ladies and gentlemen of the jury, good afternoon. I'm
21 just going to take a few minutes to conclude the argument today
22 to go over some of the evidence, but in particular I want to
23 talk about attempt because Counsel wants to give you an
24 interpretation of attempt that's not following the law at all.
25 It's not the correct interpretation of the law because the

1 Court tells you what attempt is.

2 Like any man making a cake in a kitchen, it could
3 sometimes be a very dangerous thing, but I'm thinking about a
4 cake. That may be mere preparation. If I go into the kitchen
5 and I get out the cake mix and I get out the eggs and I get out
6 the sugar and I get out the salt, I get out the nutmeg,
7 whatever cake I'm going to make and I lay it all out and I
8 start opening things up and I get the mixer in and I start
9 pouring things in the mixer, the door bell rings and I get
10 sidetracked doing something else and never come back to it, I'm
11 attempting to make a cake. I may not have gotten very far. I
12 may have not completed all the steps I needed to do, but I'm
13 attempting to make a cake.

14 Now, instead of putting two cups of sugar in that cake,
15 let's say I screw up and put two cups of salt in that cake and
16 I complete the process. I stick it in the oven and come out
17 and it is completely inedible. Doesn't work. It doesn't
18 change the fact that I attempted to make a cake.

19 It doesn't really matter whether or not Mr. Abdo had the
20 knowledge, the correct knowledge, the right knowledge, expert
21 knowledge, novice knowledge, whatever the case may be to put
22 all of this stuff -- if he put all the sugar, if he went
23 outside and got some dirt and put it in there, stuck the drill
24 in there, stuck everything just to fill the canister and he
25 packaged it all up, took it to a Chinese restaurant, set the

1 timer to go off and it didn't go off, it doesn't change the
2 fact that he attempted to detonate a destructive device. He
3 attempted to build and to detonate a destructive device. It
4 doesn't change anything.

5 All the law requires is that he have the components
6 necessary to readily construct a destructive device. That's
7 what the charge tells you. The Court tells you in the jury
8 instructions on the definition. This is found on Page -- of
9 the jury charge on Page 20. It says: Weapon of mass
10 destruction includes a destructive device which is any
11 explosive -- and it skips down -- explosive bomb or similar
12 device -- which is about four lines down -- semicolon after
13 about the third line down that says: And any -- this is the
14 very last line of that paragraph or last sentence -- and any
15 combination of parts intended for use in converting any device
16 into any destructive device and from which a destructive device
17 may be readily assembled. It doesn't matter what his level of
18 knowledge is. The objective standard -- what the law tells you
19 to do is look at it objectively. Could a bomb be readily
20 assembled? Agent Stryker told you yes. Sergeant Grimes told
21 you yes. A destructive device could be readily assembled from
22 the components he had and in fact one was done. That's
23 sufficient. That then becomes a destructive device. Whether
24 it's all put in the canister at the same time, whether it's put
25 in the canister according to the Inspire online article, really

1 doesn't matter as long as he has those components and that can
2 be readily assembled -- and you heard that he did -- that in
3 and of itself is a destructive device and under law that
4 destructive device is a firearm because you see on the very
5 next page Page 21 a firearm means any weapon that will or is
6 designed to -- may readily be converted to expel a projectile
7 by the action of an explosive -- that's a regular gun like a
8 pistol that we all think about. And then it also goes on to
9 say, the term "firearm" also includes the frame or receiver of
10 any such weapon or any firearm, muffler or firearm silencer or
11 destructive device. So by law a firearm is a destructive
12 device. So each of those counts -- that would be Three, Four,
13 Five and Six -- that mention the term "firearm," destructive
14 device, combination of parts whether assembled or not is
15 sufficient for firearm. So under the law the defendant should
16 be found guilty of each of those counts based on that
17 definition.

18 Now, let's review for just a moment the counts of the
19 indictment. Let's talk about Count One. Counsel pointed out
20 that you should find the defendant not guilty because the
21 government failed to prove that the offense or the results of
22 the offense would affect interstate commerce. Now, recall what
23 the offense is in this particular case. The offense that he's
24 charged with is attempt. The results of the offense -- that
25 would be if the offense had been completed because you recall

1 the questions I had of the witness I was asking him. And
2 Mr. Sofer asked the witness if the offense was completed, what
3 would happen? That's what that means on the definition of the
4 second prong of that test. Would the result of the offense,
5 the completed offense affect interstate commerce? And we had
6 two witnesses who testified that it would. But to the extent
7 for some reason you didn't believe that was correct, in this
8 particular case you know that this offense in and of itself
9 affected interstate commerce. You heard testimony that
10 evidence was sent from the State of Texas to the State of
11 Virginia to the FBI crime lab in Quantico to be analyzed. You
12 heard experts who traveled in interstate commerce to testify.
13 That in and of itself is an effect on commerce. Putting aside
14 the much more damaging and serious consequences of what would
15 have happened if the offense had been completed. So don't let
16 Mr. Boyd get you sidetracked on that second element because
17 that's what the second element means -- the second prong of
18 that one means.

19 But the definition of attempt which is found -- which is
20 going to deal with the next two charges I'm going to talk about
21 is found on Page -- starting on Page 15. At the bottom of the
22 page the Court tells you the two elements that we have to prove
23 for an attempt of the offense. These are just basically
24 instructions that are on top of the other two charges of Count
25 One, attempt to build and detonate a weapon of mass destruction

1 and the attempted murder of officers and employees of the
2 United States.

3 First, that the defendant intended to commit the offense
4 of attempted use of a weapon of mass destruction as in Count
5 One or attempted murder in Count Two. Intended to commit the
6 offense, that is, he had the criminal intent and then, number
7 two, that he did an act, an act, an action, one act
8 constituting a substantial step toward the commission of each
9 crime which strongly corroborates the defendant's criminal
10 intent and amounts to more than mere preparation.

11 Let's go back to the cake. If I get an ingredient out and
12 I put it on the shelf and I open it up, I'm taking a step. I'm
13 taking an action. Get the next ingredient out. Open it up.
14 Put it on the shelf. I'm taking the next action. Oops. My
15 recipe calls for buttermilk. I found out there's a way you can
16 make buttermilk, a homemade version of buttermilk. You don't
17 have to have buttermilk. So you may be out of buttermilk but
18 you put in some substitute. Maybe the recipe that I had for
19 called for nutmeg to be used but I didn't want to use nutmeg.
20 I wanted to use cinnamon instead. So I substitute that in the
21 recipe. The end result was the same, but the steps I took to
22 get there were still part of the attempt. They were still part
23 of the process of me putting together the cake. Just like we
24 talked about at the beginning in the voir dire examination.
25 Attempt is not like a swing and a miss or pushing a button and

1 it fizzles. It's the ongoing process leading up to the -- till
2 it's completed because if the process were completed, we
3 wouldn't be here on an attempted offense. We'd be talking
4 about a much more serious offense.

5 Look at the steps Mr. Abdo took. Mr. Schneider reviewed
6 them for you. 17 substantial steps he took starting back in
7 Tennessee. 17 substantial steps because he's already formed
8 his criminal intent. You know he did that by July 4th of last
9 year when he planned the execution of a soldier at Fort
10 Campbell, Kentucky. His intent never changed. The plan got
11 interrupted just like the plan got interrupted in Killeen,
12 Texas.

13 THE COURT: You have two minutes, Mr. Frazier.

14 MR. FRAZIER: Thank you.

15 But the intent never changed, ladies and gentlemen. It
16 was always the same. So those same factors regarding his
17 substantial steps are the same factors you would use in Count
18 Two to determine whether or not the defendant had the
19 predisposition to kill another person, and you know that he
20 attempted to kill uniformed service members, those are people
21 who are part of the Department of the Defense and employees and
22 officers of the United States, on Page 13, that he did so with
23 malice aforethought and those attempted killings were
24 premeditated. Those same steps show you that he had malice
25 aforethought and the attempt to kill in this particular case

1 and you know what the substantial steps were just based on the
2 evidence. But attempt does not require police to wait, to
3 watch the defendant and see what he does. It does not require
4 them to watch to see if he builds a bomb or moves it in a
5 restaurant. No. As long as you can see what his criminal
6 intent was and he's taken one substantial step, then that's it.
7 That's sufficient under the law to convict. That's it. Beyond
8 a reasonable doubt. And in this particular case common sense
9 tells you that's what the result would be in this particular
10 case. Nothing happened back in Kentucky because it's charged
11 as part of this offense. That's why it's included in this
12 indictment.

13 And I want to close and leave with this thought. This
14 case, ladies and gentlemen, I know it was quick and I'm not
15 going to talk about much more of the evidence in this case, but
16 this is a case about good police work and a very thorough
17 investigation, but none of it would have ever happened without
18 the vigilance of citizens who stepped forward and did the hard
19 thing but the right thing regarding Mr. Abdo. Elizabeth
20 Gilliland, Cathy Cheadle and Greg Ebert deserve a lot of
21 recognition and praise for the steps that they took that kept
22 this crime from happening. But without for this offense being
23 interrupted by those good citizens coming forward, this would
24 be a lot more serious offense.

25 Ladies and gentlemen, go back and do the right thing. Do

1 your duty in this case. Find the defendant guilty of all six
2 counts because he is guilty beyond a reasonable doubt on all
3 six of the counts of the indictment. Thank you for your time.

4 THE COURT: Members of the jury, at this stage in every
5 trial I have a function to perform that I sincerely dislike.
6 We select 13 people to serve as a jury, 12 and one alternate.
7 We do that so that if somebody becomes ill or has a family
8 emergency we can continue the trial with 12 jurors.

9 [REDACTED] you were the alternate in this case. The law
10 does not allow but 12 people to deliberate. So I have no
11 choice but to excuse you at this point. I'm sure you'd rather
12 prefer and deliberate with the rest of the jurors and they'd
13 probably prefer to have you do that, but we simply can't allow
14 it. So you're free to go at this time. You're free to come
15 back and stay in the courtroom and see what happens if you wish
16 to. It's your preference. Thank you very much for being here.

17 (Further jury instructions were read by the Court.)

18 THE COURT: Ladies and gentlemen, we will bring to you in
19 the jury room these things as quickly as we can gather them
20 together: All of the exhibits which were admitted into
21 evidence, the verdict form that you will need when you've
22 reached a conclusion and some forms to use to communicate with
23 me if you need to send me a note. If you'll go now to the jury
24 room and begin your deliberations by selecting your presiding
25 juror.

1 LAW CLERK: All rise.

2 (Jury exited the courtroom for deliberations at 2:21.)

3 LAW CLERK: Court will stand in recess.

4 (A break was taken from 2:21 to 3:39.)

5 LAW CLERK: All rise.

6 (The jury entered the courtroom at 3:39.)

7 THE COURT: Be seated, everyone.

8 [REDACTED], I have your note that indicates the jury has
9 reached a verdict. I need to ask you a couple of questions.
10 First of all, was the jury's verdict unanimous?

11 JUROR: Yes, sir.

12 THE COURT: Have you signed the verdict form as presiding
13 juror?

14 JUROR: Yes, sir.

15 THE COURT: Would you hand it then to the marshal, please?
16 Publish the verdict, please, Ms. Willis.

17 VERDICT

18 MS. WILLIS: We, the jury, unanimously find the defendant,
19 Naser Jason Abdo, guilty of the offense of attempted use of a
20 weapon of mass destruction as alleged in Count One of the
21 indictment.

22 We, the jury, unanimously find the defendant, Naser Jason
23 Abdo, guilty of the offense of attempted murder of officers and
24 employees of the United States as alleged in Count Two of the
25 indictment.

1 We, the jury, unanimously find the defendant, Naser Jason
2 Abdo, guilty of the offense of possession of a weapon,
3 Springfield Armory 40-caliber semiautomatic pistol, in
4 furtherance of a federal crime of violence, attempted use of a
5 weapon of mass destruction as alleged in Count Three of the
6 indictment.

7 We, the jury, unanimously find the defendant, Naser Jason
8 Abdo, guilty of the offense of possession of a weapon,
9 destructive device, in furtherance of a federal crime of
10 violence, attempted use of a weapon of mass destruction, as
11 alleged in Count Four of the indictment.

12 We, the jury, unanimously find the defendant, Naser Jason
13 Abdo, guilty of the offense of possession of a weapon,
14 Springfield Armory 40-caliber semiautomatic pistol, in
15 furtherance of a federal crime of violence, attempted murder of
16 officers or employees of the United States, as alleged in Count
17 Five of the indictment.

18 We, the jury, unanimously find the defendant, Naser Jason
19 Abdo, guilty of the offense of possession of a weapon,
20 destructive device, in furtherance of a federal crime of
21 violence, attempted murder of officers or employees of the
22 United States as alleged in Count Six of the indictment.

23 THE COURT: Are there any post verdict matters at this
24 point, Counsel?

25 MR. FRAZIER: None from the United States, Your Honor.

1 MR. BOYD: Not at this time, Your Honor.

2 THE COURT: Then, ladies and gentlemen of the jury, that
3 completes your work in this case.

4 Sentencing in this case, by the way, will be set for July
5 the 20th Friday at 9:00 a.m.

6 MR. BOYD: Your Honor, if we could push that into August,
7 I've been selected to go to a course --

8 THE COURT: You can take that up --

9 MR. BOYD: Yes, Your Honor.

10 THE COURT: -- with the court coordinator as soon as we
11 have an opportunity and we'll find a suitable date.

12 As I said, ladies and gentlemen, that completes your work
13 in this case. We appreciate very much your service. It's a
14 civic duty I realize, but it's also a civic duty that an awful
15 lot of people use some very imaginative reasons to try to get
16 out of. I'm the one who's well aware of that because I'm the
17 one who reads some of the communications they send wanting to
18 get excused from jury duty.

19 It's never an easy thing to find a fellow human being
20 guilty of serious crimes, but as I said, it is your duty to
21 follow the evidence and render a verdict accordingly and you've
22 done that and we do appreciate it. I speak on behalf of my
23 myself, the whole court system, I'm sure the prosecutors and
24 the defense.

25 I have told you numerous times through the trial that you

1 shouldn't talk with anybody about the case or allow anyone to
2 talk with you. You're now completely removed from that
3 admonition. That means that you have the absolute right to
4 talk with anyone you wish to, friends and neighbors, each
5 other, me, the lawyers, the media even, anybody at all. But
6 bear in mind that you have an absolute right not to. And if
7 anyone asks you to talk about the case and it's your preference
8 not to, then just politely decline. Nobody's going to pressure
9 you in the least because that's strictly forbidden.

10 I make it a point to visit with juries after they've
11 reached a verdict to see if they have any questions that I can
12 answer for them now that the trial is over and I'll do that
13 with you. I'll be back in just a few seconds. I won't keep
14 you long. But again on behalf of us all, thank you for your
15 service in this case. You're now discharged.

16 LAW CLERK: All rise.

17 (Jury exited the courtroom at 3:44.)

18 LAW CLERK: Court is now in recess.

19 (Hearing adjourned at 3:44.)
20
21
22
23
24
25

1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
3

4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me this 12th day of September 2012.

12
13 /s/ Kristie M. Davis
KRISTIE M. DAVIS
Official Court Reporter
14 P.O. Box 20994
Waco, Texas 76702-0994
15 (254) 754-7444
kmdaviscsr@yahoo.com
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS
May 21, 2012

	<u>Page</u>
Pretrial motions.....	2
Voir dire proceedings.....	10
Opening instructions by the Court.....	11
Government's Opening Statement by Mr. Sofer.....	24
Defendant's Opening Statement by Mr. Boyd.....	32
<u>EVIDENCE ON BEHALF OF THE GOVERNMENT</u>	
<u>CHARLES MICHAEL OWENS</u>	
Direct Examination by Mr. Sofer.....	34
Cross-Examination by Mr. Boyd.....	63
<u>ELIZABETH ANN GILLILAND</u>	
Direct Examination by Mr. Frazier.....	70
Cross-Examination by Mr. Boyd.....	87
<u>GREGORY ELDRIDGE</u>	
Direct Examination by Mr. Schneider.....	89
<u>BO JASON CAMPBELL</u>	
Direct Examination by Mr. Frazier.....	98
Cross-Examination by Mr. Boyd.....	113
<u>VICTOR LYNCH</u>	
Direct Examination by Mr. Frazier.....	115
Cross-Examination by Mr. Boyd.....	130
<u>JOZEF A. ALTER</u>	
Direct Examination by Mr. Frazier.....	131
Cross-Examination by Mr. Boyd.....	143

STEPHEN C. HAUCK

Direct Examination by Mr. Frazier.....	144
Cross-Examination by Mr. Boyd.....	148

ROBERT MOTHERSHEAD

Direct Examination by Mr. Frazier.....	149
Cross-Examination by Mr. Boyd.....	165

ABRAHAM EUGENE WHERRY

Direct Examination by Mr. Schneider.....	169
------------------------------------------	-----

DEBORAH GREELEY

Direct Examination by Mr. Schneider.....	183
------------------------------------------	-----

HUSAM AL-QAYSI

Direct Examination by Mr. Sofer.....	209
Cross-Examination by Mr. Boyd.....	226

AARON BERNARDO

Direct Examination by Mr. Sofer.....	229
--------------------------------------	-----

CATHY CHEADLE

Direct Examination by Mr. Frazier.....	240
Cross-Examination by Mr. White.....	261

DAVID RICHARD HUTTON

Direct Examination by Mr. Schneider.....	263
Cross-Examination by Mr. White.....	276

ROSEMARY MANNING

Direct Examination by Mr. Frazier.....	276
Cross-Examination by Mr. Boyd.....	282

May 23, 2012

CAMERON CHESSER

Direct Examination by Mr. Schneider.....	286
Cross-Examination by Mr. Boyd.....	298

GREG EBERT

Direct Examination by Mr. Frazier.....	298
Cross-Examination by Mr. Boyd.....	304
Redirect Examination by Mr. Frazier.....	305

RICHARD ERIC BRADLEY

Direct Examination by Mr. Frazier.....	306
Cross-Examination by Mr. Boyd.....	331
Redirect Examination by Mr. Frazier.....	339
Recross-Examination by Mr. Boyd.....	339

BRAD GRIMES

Direct Examination by Mr. Sofer.....	340
Cross-Examination by Mr. Boyd.....	400

JASON CROMARTIE

Direct Examination by Mr. Sofer.....	412
Cross-Examination by Mr. Boyd.....	430

ERICH SMITH

Direct Examination by Mr. Schneider.....	433
------------------------------------------	-----

RONALD STAMPER

Direct Examination by Mr. Frazier.....	448
----------------------------------------	-----

ANTHONY MCCRAE

Direct Examination by Mr. Frazier.....	458
----------------------------------------	-----

KAREN ANDERSON

Direct Examination by Mr. Schneider.....	463
------------------------------------------	-----

RICHARD NICHOLAS STRYKER

Direct Examination by Mr. Schneider.....	468
Voir Dire Examination by Mr. Boyd.....	470
Direct Examination continued by Mr. Schneider.....	481

May 24, 2012

RICHARD NICHOLAS STRYKER

Direct Examination continued by Mr. Schneider.....	496
Cross-Examination by Mr. Boyd.....	512
Redirect Examination by Mr. Schneider.....	531
Recross-Examination by Mr. Boyd.....	533
Government rests.....	534
Rule 29 motion.....	549

EVIDENCE ON BEHALF OF THE DEFENDANT

ANITA RINEHART

Direct Examination by Mr. Boyd.....	551
-------------------------------------	-----

WILLIE WINGFIELD

Direct Examination by Mr. Boyd.....	556
-------------------------------------	-----

ERIC BRADLEY

Direct Examination by Mr. Boyd.....	560
Cross-Examination by Mr. Frazier.....	567
Redirect Examination by Mr. Boyd.....	567
Defendant rests.....	568
Government rests.....	568
Objections to jury instructions.....	569
Jury Instructions.....	571
Government's Opening Argument by Mr. Schneider.....	571
Defendant's Closing Argument by Mr. Boyd.....	583
Government's Closing Argument by Mr. Frazier.....	590
Jury retired for deliberations.....	599
Jury Verdict.....	599
Adjournment.....	602

1 Court Reporter's Certificate..... 603

2 EXHIBIT INDEX

3 Government's Exhibits

4	No.	Description	Admitted
5	1	Advice of Rights 7-27-11.....	40
6	2	Advice of Rights 7-28-11.....	42
7	3	Naser Jason Abdo's Orders.....	83
8	4	One pair yellow leather gloves.....	118
9	5	One pair coated knit gloves.....	118
10	6	Shovel.....	118
11	7	Green body bag carrier.....	118
12	8	Brown neck gaiter.....	118
13	9	One grey hood.....	118
14	10	USB cable.....	119
15	11	Black pouch with black material bed skirts.....	118
16	12	Black pouch with black material bed skirts.....	118
17	13	Green body bag.....	118
18	14	Two black masks.....	415
19	15	Photographs at scene - Dumpster: 16 pictures 15A through 15P.....	110
20	16	Two black plastic trash bags.....	118
21	17	One container of bleach.....	118
22	18	One container of bleach.....	118
23	19	Blue Sanyo camera.....	119
24	20	Passport.....	138
25			

1	21	SSN card.....	138
2	22	Marriage certificate.....	138
3	23	Birth certificate.....	138
4	25	Transcript from Dallas County Community College: One page.....	138
5			
6	26	State Department Certification of School Records: Four pages.....	138
7	27	Vehicle pass, Fort Campbell: One page.....	138
8	28	Operator's permit copy: One page.....	138
9	29	Enlistment documents: Three pages.....	138
10	30	Combatives Training Certification: One page.....	138
11	31	Air Assault Certification: Two pages.....	138
12	32	Ownership and insurance information: Seven pages...	138
13	33	Receipt for handcuffs.....	138
14	34	Three handcuff boxes.....	142
15	35	One Jolt electric stock prod with tag.....	142
16	36	Bushnell binocular covers, front and back.....	142
17	37	One set car keys, three keys and one keyfob.....	142
18	38	United States Army hat, Abdo name tag.....	142
19	39	Garbage bag roll.....	142
20	40	Eight zip ties.....	142
21	41	Roll of electrical tape.....	142
22	42	Picture of items in car (16) Photographs 42A through 42N.....	123
23			
24	43	Bill of Sale for 40-caliber Springfield pistol.....	177
25	44	Walmart receipt July 26, 2011 12:25 a.m.....	192

1	45	Surveillance video excerpts Walmart.....	187
2	46	Hotel receipts and copy of Pluto drivers license, three pages.....	237
3			
4	47	Hotel surveillance video excerpts: Arrival, room change, detention, EOD.....	232
5	48	Guns Galore stills (five stills.).....	260
6	49	Guns Galore video.....	249
7	50	Guns Galore receipts, actual.....	255
8	51	Guns Galore receipt, annotated by Cheadle.....	255
9	52	Surplus City video clips.....	268
10	53	Lowe's stills - three stills 53A, 53B, 53C.....	289
11	54	Lowe's receipt.....	293
12	55	KPD dashcam clip.....	327
13	56	Black backpack.....	360
14	57	Wall clock.....	360
15	58	Wall clock.....	360
16	59	Two 9v batteries.....	360
17	60	One spool 16 gauge wire blk.....	360
18	61	One spool 16 gauge wire blk.....	360
19	62	List of items including "red/black/green wire".....	360
20	63	Internet article: "How to shoot handgun accurately" July 7, 2011.....	360
21			
22	64	Internet article: "Shooting technique and practice" July 7, 2011.....	360
23	65	Internet blog: "Please help me, new XD-40 jamming a lot" July 7, 2011.....	360
24			
25	66	Internet article: "Basic firearms course, Sections 5 and 6" July 7, 2011.....	360

1	67	Internet article: Inspire magazine: "How to build a bomb in the kitchen of your mom".....	360
2			
3	68	Composition book with writings.....	360
4	69	Atlas with writings.....	360
5	70	Loaded 40-caliber Springfield XD magazine with seven rounds in bag.....	360
6	71	Two boxes Winchester shotgun ammunition, six individual bags of cut shotgun shells, gunpowder and pellets.....	360
7			
8	72	Acer Notebook computer with box battery charger and documents.....	360
9			
10	73	Springfield Armory XD-40 handgun in box, .40 caliber	360
11	74	Tennessee ID card for Asher Pluto.....	323
12	75	Pictures of items from backpack: (2) Photographs 75A through 75B.....	330
13	75	Pictures of items from backpack: (2) Photographs 75C through 75D.....	347
14	75	Picture of items from backpack: 75E.....	352
15	75	Pictures of items from backpack: 75F.....	362
16	75	Picture of items from backpack: 75G.....	363
17	76	Tracfone box, packaging and adapter.....	397
18	77	Walmart receipt, July 26, 2011 - 12:13 a.m.....	192
19	78	Handwritten list - includes: "Sugar, powder, Gorilla...".....	397
20			
21	79	Tracfone calling card and International calling card	397
22	80	Clothing tag (Walmart.).....	397
23	81	Electrical tape, empty packaging (Walmart.).....	397
24	82	White floppy hat.....	397
25	83	Two clothing tags (Walmart.).....	397

1	84	Photographs from Room 248: (10) Photographs 84A through 84J.....	393
2	85	Black & Decker electrical drill.....	384
3	86	Black & Decker electrical drill cardboard box.....	384
4	87	Skil drill bit set.....	384
5	88	Wall clock.....	384
6	89	Wall clock.....	384
7	90	Bottle of smokeless powder - IMR4198.....	384
8	91	Bottle of smokeless powder - HS-6.....	384
9	92	Bottle of smokeless powder - H414.....	384
10	93	Bottle of smokeless powder - LIL'GUN.....	384
11	94	Bottle of smokeless powder - H4350.....	384
12	95	Bottle of smokeless powder - HS-7.....	384
13	96	Walmart receipt July 25, 2011, 9:56 p.m.....	192
14	97	Leatherman utility knife and blades from utility knife.....	384
15	98	One Kodak Playsport video camera.....	384
16	99	Packaging and wiring for Kodak camera.....	384
17	100	Five cut shotgun shells and box.....	384
18	101	Springfield magazine with four rounds ammunition....	384
19	102	Springfield magazine with ten rounds ammunition....	384
20	103	Springfield magazine with no ammunition.....	384
21	104	Gorilla tape.....	384
22	105	Two 9v batteries with packaging and 3AA batteries...	384
23	106	Two-inch paint brush.....	384
24	107	One roll black electrical tape.....	384
25			

1	108	Assorted zip ties.....	384
2	109	Screwdrivers and allen wrench, six piece set.....	384
3	110	Pressure cooker regulator.....	384
4	111	Two spools 18 gauge wire -- one red, one black.....	384
5	112	One box Domino sugar.....	384
6	113	One box Domino sugar.....	384
7	114	Two boxes 40-caliber ammunition.....	384
8	115	One bag loose ammunition 40-caliber.....	384
9	116	One XD magazine package - empty.....	384
10	117	Four razor blades in packaging.....	384
11	118	Five shotgun shells -- two uncut, three cut open....	384
12	119	Shotgun pellets and powder in plastic cup.....	384
13	120	Contents of pressure cooker- shotgun pellets and powder.....	384
14	121	Army ACU uniform with "Smith" name tag, boots, two belts (tan and black), hat with "Smith" name tag..	384
15	122	One medical assistant uniform and lanyard.....	384
16	123	Three identification cards for Naser Jason Abdo; one for Rania Raed Anani.....	384
17	124	One 16 quart pressure cooker bottom.....	384
18	125	One 16 quart pressure cooker lid.....	384
19	126	One pressure cooker bottom.....	384
20	127	One pressure cooker lid.....	384
21	128	One pressure cooker regulator.....	384
22	129	One 16 quart pressure cooker box.....	384
23	130	One instruction manual for pressure cooker (smaller, not 16 quart.).....	384
24			
25			

1	131	Zap Double Trouble Stun Gun.....	384
2	132	Bushnell binoculars.....	384
3	133	Tracfone chargers, manuals and accessories.....	384
4	134	Christmas lights with one light removed from strand.	384
5	135	One University of Texas Longhorn T-shirt.....	384
6	136	Page ripped from phone book, "Guns and Gunsmiths- Guns Galore".....	384
7			
8	137	Melted razor and metal lid, plastic and pressure cooker booklets.....	384
9	138	Contact cement.....	384
10	139	Two Bic cigarette lighters.....	384
11	140	Bed skirt.....	384
12	141	Head lamp.....	384
13	142	Two hotel room keys - Room 230 and Room 248.....	384
14	143	One Visa checkcard "Naser Abdo".....	384
15	144	Two Lowe's boxes.....	384
16	145	Clothing Defendant wearing when arrested, July 27, 2011 (shorts and undergarments.).....	321
17			
18	146	Clothing defendant wearing when arrested, July 27, 2011 (hat, watch, sunglasses.).....	321
19	147-1		
20		Photograph of items inside of Room 230.....	366
21	147-2		
22		Photograph of items inside of Room 230.....	366
23	147	Photograph of items inside of Room 230: (43) Photographs 147-3 through 147-45.....	385
24	149	CD of telephone call to Carly Gordon.....	462
25	150	CD of the video and audio of Clarisa Morland visit with Abdo.....	466

1	151	Video and audio of test burns and two angles of	
2		test of device.....	509
3	152	Video of high speed camera test fire of device.....	509
4	153	Two photographs Naser Jason Abdo: 153A and 153B....	38
5	154	Photograph of Outside of Guns Galore.....	261
6	155	Photograph of outside of Surplus City.....	274

Defendant's Exhibits

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
6	Clip of arrest/detention sequence.....	560